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1 UNIVERSAL CITY STUDIOS, INC.

2 v.

82 Civ. 4259 RWS

3 NINTENDO OF AMERICA CO., LTD.

4 May 23, 1985

5 9:30 a.m.

6 (In open court)

7 MR. FAIRHURST: Your Honor, one minor

8 housekeeping chore. At the end of yesterday I promised a
9 copy of Plaintiff's Exhibit 108 to be added to our booklet.
10 We are fulfilling that same credit promise.

11 ROBERT DONALD HADL, resumed.

12 DIRECT EXAMINATION (Cont'd)

13 BY MR. FAIRHURST:

14 Q. Mr. Hadl, when we left off yesterday you had
15 mentioned that you had a discussion with Mr. Kroft after he
16 had looked at the King Kong game and you asked him what his
17 advice was and I believe you said that he advised you that
18 Universal had a claim; is that correct?

19 A. That's correct.

20 Q. Immediately after that conversation can you tell
21 us what next occurred as you recall?

22 A. As I recall, the next thing that happened was
23 Mr. Kroft set about to -- I can't remember whether it was a
24 letter or telex or something for the purpose of finding out
25 who the company was, where it should be sent. The next

1 thing that happened after that most immediately, I recall
2 having conversation with Mr. Sheinberg.

3 Q. What occasioned your conversation with Mr.
4 Sheinberg?

5 A. Mr. Sheinberg had had apparently a meeting with
6 a Mr. Greenberg. Mr. Greenberg was and I think still is
7 the president and chief executive officer of Coleco.

8 Mr. Greenberg had apparently come to Universal
9 for this lunch which I think had been arranged by Mr. Adler,
10 by the way, of which I did not know anything until after
11 the lunch occurred. I was not involved in any way. It was
12 a business lunch.

13 Q. You learned about this luncheon after the actual
14 fact of the luncheon?

15 A. That's right. The key thing I remember about it
16 was Mr. Sheinberg called me or I went to see him and he
17 said to me he had this lunch with Mr. Greenberg. He had
18 learned that this very same game that we were concerned
19 about, Donkey Kong, was going to be brought out in a home
20 video version, that Coleco was, in fact, the licensee, that
21 he had told Mr. Greenberg at the lunch about what our
22 concerns were and Mr. Greenberg's response to him was --
23 and I remember -- "what took you so long?"

24 Q. Mr. Sheinberg reported this to you?

25 A. Right.

1 Q. After that report from Mr. Sheinberg, did you
2 have any subsequent discussions with Mr. Kroft about what
3 was then evolving as the Donkey Kong/King Kong claim?

4 A. I think within 24 or 48 hours after that
5 conversation I was in touch with Mr. Kroft again about
6 where was the complaint, where was the letter, what was
7 going on and we now learn that not only was it Nintendo
8 that we were concerned about but that Coleco was in this
9 picture and that we felt, again -- Mr. Greenberg's remark
10 was further support that here was somebody who was taking
11 our property.

12 So what we did was we then sent out a telex.

13 Q. Let me show you what has been offered and
14 accepted in evidence as plaintiff's Exhibit 14 and ask you
15 if that is the telex to which you referred?

16 A. Yes, that's the telex.

17 Q. Did you see this telex before it was actually
18 sent out?

19 A. Yes, I did.

20 Q. Who prepared it?

21 A. Mr. Kroft.

22 Q. Do you recall whether you discussed the contents
23 of the telex with Mr. Kroft after he sent it to you?

24 A. Yes. I think we would have talked about the
25 contents. As I recall, and I have looked at this again

1 recently in preparation for this trial, I recall talking
2 with Mr. Kroft a lot about how much time we were going to
3 give them to respond. I think there was some concern about
4 that. I remember we agreed on that. Then it went out over
5 Mr. Sheinberg's signature and I think the important point
6 was that it also went to Coleco. It didn't only go to
7 Nintendo at that point.

8 Q. Do you recall when you had this discussion with
9 Mr. Kroft over the timing of it, whether this was a
10 telephone conversation with Mr. Kroft or was he physically
11 at Universal when you were discussing it with him?

12 A. I think he probably sent me a draft and I
13 probably talked to him on the telephone.

14 Q. Do you recall at that time whether you asked any
15 questions of Mr. Kroft with respect to the matters that are
16 actually set forth, the references to the basis upon which
17 Universal claims its rights?

18 A. I think that with respect to my understanding
19 about the rights in King Kong I would have to describe it
20 as an evolutionary kind of situation. I think up until
21 this point, when the telex went out, my conversations with
22 Mr. Kroft, to the extent they involved rights, were really
23 directed toward whether we felt that Donkey Kong was an
24 infringement of King Kong. He and I were not talking about
25 at that point whether we had rights, whether there was a

1 good chain of title.

2 I took it on faith from him and it was subsumed
3 in the conversations we had the rights. The only question
4 was whether in Mr. Kroft's mind and in my mind there was
5 substantial similarity here, whether or not the articles
6 were -- the two things were very much the same and it was
7 on that issue I recall I felt very strongly about it.

8 He wasn't as strong as I was but he certainly
9 felt we had a claim.

10 MR. KIRBY: Your Honor, may have a continuing
11 objection on the same basis as yesterday?

12 THE COURT: Yes.

13 MR. KIRBY: Thank you, your Honor.

14 Q. Once you learned from Mr. Sheinberg that he had
15 met with Mr. Greenberg of Coleco and got back with Mr.
16 Kroft about the telex and to add Coleco to it, correct?

17 A. Yes, that's correct.

18 Q. What next do you recall in the chain of events?
19 And I am going to try to give you a date to fix it by so
20 when we proceed further that we do have some reference.
21 It's been established on the record that Mr. Sheinberg's
22 luncheon with Mr. Greenberg was on April 27 and the telex
23 of course was April 28th. Using that as a benchmark, if I
24 may, what next occurred after that?

25 A. I think the next thing that happened was --

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1 there were a couple of things that happened almost
2 simultaneously.

3 After Coleco got the telex they were in contact
4 with us and Mr. Schwefel, who was a lawyer for Coleco and I
5 were charged with the responsibility of seeing whether we
6 couldn't resolve the matter.

7 At the same time, preparation was made to see
8 whether the parties couldn't get together to resolve it,
9 that is, people from Nintendo, people from Coleco and
10 people from Universal. And in fact such a meeting did
11 occur.

12 Q. Did you arrange that meeting?

13 A. I believe Mr. Schwefel and I were involved and I
14 can't recall whether or not I actually talked with Mr.
15 Lincoln at that time before the first meeting in my office.
16 I may have.

17 Q. Did you call Mr. Schwefel or did he call you, if
18 you remember?

19 A. Well, I think as a result of the lunch Mr.
20 Sheinberg had with Mr. Greenberg and when they received the
21 telex I believe they called us.

22 MR. KIRBY: Your Honor, I object and move to
23 strike. I think we've had too much of what the witness
24 thinks may have happened and we are not getting anything
25 other than speculation. He should answer the question if

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1 he can and if he can't he should not and he not speculate
2 and I request that you so direct him.

3 THE COURT: You are so directed, Mr. Hadl.

4 Q. In any event, whether Mr. Schwefel called you or
5 you called him, you had a conversation with him, is that
6 correct?

7 A. That's correct.

8 Q. What occurred as a consequence of that
9 conversation?

10 A. We resolved the claim that we had vis-a-vis
11 Coleco.

12 Q. Did you resolve the claim that Universal had
13 vis-a-vis Coleco during that conversation with Mr. Schwefel
14 or subsequently?

15 A. There were a series of conversations.

16 Q. What next after the first telephone conversation
17 with Mr. Schwefel, what's the next event that occurred?

18 A. After that we had the -- it's hard for me to put
19 it exactly in context. The meeting occurred on May 6.

20 Q. When you went to that meeting, did you have
21 anyone with you representing Universal?

22 A. Yes.

23 Q. Who was that?

24 A. Mr. Kroft.

25 Q. It was you and Mr. Kroft from Universal?

1 A. That's correct.

2 Q. And Mr. Schwefel from Coleco?

3 A. That's correct.

4 Q. Anyone else?

5 A. I believe he had counsel with him.

6 Q. Do you remember who it was?

7 A. The firm was Kaye Scholer. I don't remember all
8 the other names. It was somebody from that firm.

9 Q. What about Nintendo?

10 A. I believe Mr. Arakawa was there, Mr. Lincoln was
11 there and I believe there was another gentleman.

12 Q. Mr. McGee?

13 A. Yes, Mr. McGee.

14 Q. You had not met any of those persons with the
15 exception of Mr. Kroft before; is that correct?

16 A. That's correct.

17 Q. At this meeting on May 6, can you tell us in
18 substance what occurred?

19 A. The point of the meeting was -- we had sent this
20 telex and the point was to see whether or not the parties
21 could come to some agreement to resolve our claim.

22 prior to the meeting, as I have indicated, we
23 had come to an understanding with Coleco. That
24 understanding was later embodied in an agreement. So
25 Coleco came to the meeting with the knowledge that they had

1 resolved their claim with us and the issue was whether or
2 not we could also reach an understanding with Nintendo.

3 Q. And would you tell us in your own words what
4 progress, if any, was made in reaching an understanding
5 with Nintendo?

6 A. Well, there was no progress with Nintendo. To
7 get to the end of the meeting, they left the meeting, as I
8 recall, saying that they would consider the matter and get
9 back to us.

10 Q. When you went to that meeting, Mr. Hadl, did you
11 have an understanding as to whether Universal or
12 Merchandising had entered into any licensing agreements
13 with anyone else over King Kong?

14 A. Well, what also occurred during that week period
15 of time was that it came to my attention that Merchandising
16 had given a license to another company involving King Kong
17 and that other company was Tiger Electronics.

18 Q. How did that come to your attention?

19 A. It came to my attention from Mr. Adler.

20 Q. Who is Mr. Adler?

21 A. Mr. Adler worked for as was I believe a
22 vice-president of Merchandising Corporation of America.

23 Q. How did it come to your attention; what did he
24 do?

25 A. Well, to put it the best way I remember, there

1 had been this luncheon with Mr. Greenberg. Mr. Sheinberg
2 had come away from the luncheon disturbed because Mr.
3 Greenberg had said to him, you know, what took you so long,
4 as though we had been asleep at the switch and not going
5 after someone who was invading -- taking our property.

6 During this period -- I guess it's about a week
7 period or 10-day period -- we had conversations with Coleco,
8 came to some understanding with them and then found that
9 Mr. Adler whom -- I recall that he had advised Mr.
10 Sheinberg at the time that there were no outstanding
11 licenses involving King Kong and the home video area and
12 during this 10-day period he all of a sudden remembered,
13 ah-hah, about 8, 9 months ago, he did give a license to
14 somebody in the home video area.

15 As it turned out, this was an exclusive license
16 for home video rights in King Kong and that was very
17 upsetting and disturbing to us because it then appeared
18 that he had given away what we regarded as a very valuable
19 property and that this might impede our ability to make the
20 arrangement with Coleco and Nintendo.

21 Q. Were you given any specific assignment by Mr.
22 Sheinberg to resolve this matter?

23 A. I don't know that it was specific. It was clear
24 that's what my job was.

25 Q. You were brought in to handle it in some way and

1 resolve the problem?

2 A. I was handling this matter to start with. It
3 went with the territory.

4 Q. Can you tell us what you did at this time? Now
5 we are moving on several planes simultaneously. If I may
6 focus on the Tiger plane, if I may call it that, what did
7 you do initially after you learned of the fact that
8 Merchandising had entered into this licensing agreement
9 with a company called Tiger Electronics?

10 A. Adler came to me and said, yes, we have made
11 this deal and we have not heard anything from them. I
12 think under our agreement we can terminate it because they
13 have not sent us any material. We have not seen a thing. .
14 Adler immediately prepared a telex to Tiger saying that I
15 believe your license is terminated because we have heard
16 nothing from you and also you haven't come to us for the
17 necessary approvals, which are required under the agreement
18 and, therefore, the license is no longer.

19 Q. I am going to show you what has been marked as
20 Plaintiff's Exhibit 15 and ask you if you can identify
21 Plaintiff's Exhibit 15 for us?

22 A. Yes. This was the telex and I remember that it
23 was prepared by -- it may have been prepared by Miss
24 Sifuentes for Mr. Adler, but it went out from their
25 department.

1 Q. After you learned of the existence of this Tiger
2 agreement, did there come a time when you spoke about it
3 directly with Miss Sifuentes?

4 A. Well, I think that I was speaking about it with
5 her at the time this went out. I think I was aware of this
6 telex. I think the next thing that happened was Tiger
7 responded to this.

8 MR. KIRBY: Objection, your Honor, move to
9 strike.

10 THE COURT: It will be stricken.

11 Q. Do you recall specifically? You are using the
12 construction "I think." Can you tell us what actually
13 occurred?

14 A. Yes. What happened after this telex went out I
15 was advised that we had received a response and that Tiger
16 had submitted some materials in response.

17 Q. Did there come a time, Mr. Hadl, when you
18 yourself saw the materials?

19 A. Yes, there did.

20 Q. Let me put in front of you what has been
21 identified and marked as Plaintiff's Exhibit 16 and 53. We
22 have two separate exhibits.

23 MR. FAIRHURST: Just so the record is clear, in
24 what I am showing the witness and what's on the record here,
25 16 is a covering letter from Randy Rissman of Tiger to

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1 Loretta Sifuentes and dates dated May 5, 1982. That's all
2 Plaintiff's Exhibit 16 is.

3 Plaintiff's Exhibit 15 is the same letter but
4 annexed to it in the form that I am going to show the
5 witness are various materials referred to in the letter
6 itself. This is the original letter and the original
7 materials.

8 Q. I'm going to ask the the witness to put both of
9 them in front of him.

10 MR. FAIRHURST: We have furnished counsel for
11 Nintendo with copies. This is the original. The copies
12 they have are not in the colors and so forth. I am going
13 to ask Mr. Hadl just a few questions about that.

14 Q. Mr. Hadl, can you identify Plaintiff's Exhibit
15 53 for us?

16 A. Yes, I can. This is the material we received.

17 Q. When that material was received, did you
18 yourself review it?

19 A. Yes, I did.

20 Q. Going through it, can you tell us what
21 specifically you reviewed?

22 A. Well, I reviewed the material that's in this
23 exhibit and it appears to be promotional and advertising
24 and other material. They have described it here in the
25 letter, which was to go along with their game.

1 Q. Did you form an opinion about that material at
2 the time?

3 A. Yes, I did.

4 Q. What was your opinion?

5 A. After looking at this material -- there were a
6 variety of things. Tiger had a license to do a home video
7 game I believe and then a tabletop game and something else.
8 The main thing I focused on was the home video game.

9 Q. What specifically about it?

10 A. When I looked at the packaging or art work for
11 the home video game I got very concerned that it looked
12 very much like the Donkey Kong game.

13 Q. When you say the Donkey Kong game, you are
14 referring to the video arcade game that you had seen and
15 played; is that correct?

16 A. That's correct.

17 Q. What is it that alerted your attention
18 specifically?

19 A. What was of concern to me they had certain
20 ladders which looked like they were similar to the ladders
21 in the Donkey Kong arcade game. Be there was something at
22 that time called the jump button or something which the
23 character jumped and it looked to me like there was going
24 to be something like that and it looked to me like there
25 was a gorilla on top of the building. I was very concerned

1 would hold up in terms of terminating that license. I am
2 not all that familiar with that area of the law. There was
3 some argumentation that if they came in with the approvals
4 and they came in with the art work that you might then
5 still have the license.

6 When we saw the material, however, when we
7 finally did get the material, it then struck me that there
8 was a much more critical problem involved with Tiger than
9 merely that and that was that notwithstanding that we had
10 the right to give them the King Kong rights they had no
11 right to take those King Kong rights and then somebody else
12 had a game out there, even though we were suing them and
13 potentially copy what that person had in terms of a video
14 display and that became my principal concern and I think
15 that's what expressed and articulated in this letter -- in
16 this telex.

17 Q. When you first learned that the Tiger agreement
18 had been entered into I believe you said it was from Mr.
19 Adler?

20 A. Yes.

21 Q. Did you have a conversation with Miss Sifuentes
22 about that as well?

23 A. Yes.

24 Q. And did you?

25 A. Yes.

1 Q. What can you tell us about that conversation?

2 A. What I remember about that conversation is that
3 I asked her and I believe as I asked Mr. Adler, how could
4 they have licensed this very valuable property in a media
5 which was at that point emerging and was becoming and
6 enormous business for such a small amount of money and
7 given away those very valuable rights when they made the
8 deal they did.

9 Q. Let me ask you, Mr. Hadl: Did you express
10 upsetment?

11 A. Upsetment?

12 Q. With Miss Sifuentes during that meeting.

13 A. Yes, I did.

14 Q. Would you tell us how you expressed your
15 upsetment?

16 A. Just by saying -- I was angry.

17 Q. Did you have a discussion with Miss Sifuentes at
18 that time about the underlying basis of Universal's rights
19 in King Kong?

20 A. No.

21 Q. Did there ever come a time in your dealings with
22 Sifuentes in conjunction with King Kong and Donkey Kong in
23 which you had a discussion with Miss Sifuentes about the
24 underlying basis of Universal's rights in King Kong?

25 A. No.

1 Q. Do you recall, Mr. Hadl, when you and Miss
2 Sifuentes first became involved in any discussions of any
3 kind about King Kong and Donkey Kong?

4 A. Well, the first I would have been with Miss
5 Sifuentes about King Kong or Donkey Kong would have been
6 with respect to the Tiger matter.

7 Q. You had no prior discussions?

8 A. No. What happened after -- again, there were a
9 couple of things going on simultaneously. This telex is
10 dated -- I don't see it. What was the date?

11 Q. It's on the top -- 5-8-82 -- first line.

12 A. And within a week or so -- I was also talking to
13 Mr. Schwefel at Coleco -- I had advised him about the
14 Tiger matter. In fact, I believe I advised him about the
15 Tiger matter before he came to the meeting on May 6. And
16 so he and I were talking about this and at the same time I
17 was having prepared the agreement with Coleco about which
18 we had reached an understanding. Again, Nintendo not being
19 within that at that moment, they had gone back to Seattle I
20 guess and they were considering it.

21 Q. Did you tell Mr. Schwefel of Coleco about the
22 Tiger agreement prior to his coming coming out to Universal
23 on May 6?

24 A. My best recollection is that I did.

25 Q. So, in other words, at the meeting of May 6 Mr.

1 Schwefel knew about the Tiger agreement?

2 A. Yes, to the best of my recollection.

3 Q. Did you advise Mr. Kroft of the Tiger agreement?

4 A. Yes, I did.

5 Q. You advised Mr. Kroft of the Tiger agreement
6 prior to the May 6 meeting?

7 A. Yes, I did.

8 Q. What did you tell Mr. Schwefel about the Tiger
9 matter when you first told him about it?

10 A. I told Mr. Schwefel that I discovered that we
11 had a license with someone else, that we were -- and that
12 we were trying to get out of it.

13 Q. Did you tell him it was embarrassing?

14 A. Yes.

15 Q. Did you tell him that Mr. Sheinberg had been
16 upset to here about it?

17 A. Yes, I did.

18 Q. What do you recall happening after the May 6
19 meeting in conjunction with this evolving series of events
20 over Donkey Kong and King Kong?

21 A. Well, the way things ultimately terminated -- if
22 I can jump ahead and jump back if you like -- we had worked
23 out in principle an agreement with Coleco before they
24 attended the meeting and that agreement was that we would
25 give them a covenant not to sue and they would, in turn,

1 pay us a royalty of 3 percent.

2 Q. Was that a negotiated royalty?

3 A. Yes, it was. We asked them for a good bit more.

4 Q. Do you remember what you asked them?

5 A. I remember we asked them for between 7 and 10
6 percent.

7 Q. Can you tell us now what Universal's standard,
8 if it had a standard rate, its royalty rate was for
9 licensing--

10 A Things were evolving again. That was within the
11 30 days of the motion picture ET was released that had a
12 major impact in the industry on what merchandising
13 licensing rates were. At that time 7 to 8 percent was a
14 fairly standard rate. After that time I think it went much
15 higher.

16 Q. So you wound up with a royalty rate on the
17 Coleco of 3 percent?

18 A. Yes. I believe that the way we worked it out,
19 as I said, it got started because Mr. Greenberg has a lunch
20 with Mr. Sheinberg. That lunch was to discuss general
21 overall business matters. Coleco had been a licensee of
22 Merchandising, had had some products and they were anxious
23 and interested in doing more things with us.

24 Q. How did you come to understand the purpose of
25 this lunch that Mr. Greenberg and Mr. Sheinberg had?

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1 A. This is after the lunch.

2 Q. Who told you about the dealings?

3 A. Mr. Sheinberg. I think how we arrived at the --
4 your question about how did we arrive at the 3 percent rate,
5 we arrived at the 3 percent rate as a rate on which the one
6 hand it was Coleco's recognition that our product was being
7 taken here and giving us something for that and on the
8 other hand our agreeing to a rate which was not going to --
9 which was going to let them go about their business.

10 MR. KIRBY: Your Honor, I move to strike that
11 answer.

12 THE COURT: It will be stricken.

13 A. I'm sorry. I keep saying "we believe."

14 Q. Can you testify to what you are testifying as
15 your own personal knowledge of the series of events that
16 occurred?

17 A. Yes. That's my knowledge and I made the
18 agreement with them at 3 percent for those reasons.

19 Q. During the course of this you said you made the
20 agreement. Did you physically do the drafting of the
21 Coleco covenant not to sue?

22 A. No, I asked Mr. DiMuro to prepare it for me.

23 Q. Do you recall when you asked Mr. DiMuro to
24 prepare it?

25 A. It would have been after the meeting of May 6.

1 draft that Mr. DiMuro sent you? Compare 109 with 110.

2 A. 110 is a memo to me which says "I reviewed your
3 redraft and think your revisions are fine," so I guess I
4 made some revisions.

5 Q. Do you remember what they were?

6 A. I would have to study them.

7 Q. Would you please do so?

8 (Pause)?

9 A. There is a paragraph in the original draft he
10 prepared that is taken out of my revision.

11 Q. What paragraph is that?

12 A. Paragraph 5. Paragraph 5 of -- I guess this is
13 109.

14 Q. Paragraph 5 of 109 was taken out and 110 is the
15 result of that having been deleted, is that correct?

16 A. That is correct.

17 Q. Can you tell us why you took paragraph 5 out of
18 109?

19 A. Paragraph 5 refers to a pending application by
20 Universal for registration of trademark King Kong in
21 international class 9 and says Coleco agrees to take no
22 action which may hinder or prevent the registration of such
23 trademark in the name of Universal.

24 Q. Can you tell us why it was taken out?

25 A. Yes. It also came to my attention at that time

1 that Mr. Adler had sought to register the trademark King
2 Kong in the trademark office, and I pursued that to inquire
3 as to what the basis of that was, and discovered that it
4 was based upon a procedure in which they took some wrist
5 watches and put a King Kong name or stamp on them and then
6 took them up to someplace on the Universal property, and
7 sold them in interstate commerce.

8 It came to my attention the law in this area was
9 evolving, and there was some question as to whether that
10 was a valid use which would form the basis of a trademark
11 registration, so I took this out because it was my
12 intention to not further -- to not go ahead with that
13 trademark application considering what I thought was a
14 potential for a questionable basis for that application.

15 Q. Thank you.

16 Now, do you recall, Mr. Hadl, whether when you
17 instructed Mr. DiMuro to prepare a draft you gave him any
18 description of the Donkey Kong arcade game?

19 A. I don't recall that.

20 Q. Can you tell us when it was in your mind that
21 you had negotiated the essential terms of the agreement
22 with Coleco in that covenant not to sue?

23 MR. KIRBY: Asked and answered.

24 THE COURT: Sustained.

25 Q. Coleco eventually signed the covenant not to sue?

1 A. That is correct.

2 Q. I direct your attention to Plaintiff's Exhibit
3 19. Is that the signed agreement?

4 A. Yes, it is.

5 Q. And you notice the date of 19, Plaintiff's
6 Exhibit 19?

7 A. Pardon me?

8 Q. You notice the date at the top of Plaintiff's
9 Exhibit 19?

10 A. Yes. It says May 12.

11 Q. Had the terms of the agreement been essentially
12 agreed upon before the actual document was signed?

13 A. Yes, they had.

14 Q. That is all I am trying to get at. Yes, they
15 had?

16 A. Yes, they had.

17 Q. All right.

18 Now, do you recall, Mr. Hadl, whether at this
19 time -- when I say "This time" I use the period between May
20 6 and May 19, in that period -- whether you received any
21 memoranda from Ms. Sifuentes on the subject of King Kong?

22 A. Yes. I received from Ms. Sifuentes --

23 Q. Please continue the answer?

24 A. I received a package of material from Ms.

25 Sifuentes.

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1 Q. Let me put in front of you what has been put in
2 evidence as Plaintiff's Exhibit 54.

3 A. Yes. This is the package of material. I might
4 say that I don't have now any present recollection of
5 having received it at that time. I have looked at this in
6 preparation for this trial, and can't remember specifically
7 at the time that I received it -- I have looked at it and
8 note that she just says she is sending me some memos, and I
9 don't recall that it was in specific response to something
10 I had asked her to do.

11 Q. Is it your best recollection that you received
12 this at the time without having specifically asked her to
13 do anything?

14 A. That is correct.

15 Q. And then you got it, and I assume you looked
16 over the materials?

17 A. Yes.

18 Q. Did you have a discussion with anyone about the
19 contents of Plaintiff's Exhibit 54, and so we are clear by
20 "Contents" I mean any of the exhibits, memos, letters,
21 attached to the covering memo, which I will read into the
22 record.

23 It is from Ms. Sifuentes to Bob Hadl, May 12,
24 1982:

25 "I am enclosing several memos from Joe DiMuro

1 regarding King Kong merchandising. Please note the initial
2 memo of June 18, 1980 to Sid Sheinberg. My recollection is
3 that after this was received Sid Sheinberg spoke to Steve
4 Adler and instructed him to license King Kong. On July 1,
5 1980, Steve Adler sent me a memo requesting discussion of
6 King Kong licensing."

7 That is the covering memo. Did you have a
8 conversation with Ms. Sifuentes as a consequence of
9 receiving that memorandum?

10 A. Not that I recall.

11 Q. Did you have a discussion with Mr. DiMuro as a
12 consequence of receiving that memorandum?

13 A. Not that I recall. This is dated May 12. At
14 the time Mr. DiMuro and I were talking about the Coléco
15 covenant not to sue.

16 Q. You don't recall specific discussions with Mr.
17 DiMuro about the contents of any of those memos?

18 A. Not that I recall.

19 Q. Did you read the memorandum from Mr. DiMuro to
20 Mr. Steinberg to which Ms. Sifuentes adverts in the second
21 paragraph of her memorandum?

22 A. I can't tell you that I read it at that time. I
23 have since read it. I don't recall that I read it at that
24 time.

25 Q. Okay.

1 Now, so we can switch back to another plane to
2 keep the chronology going, if I may state it that way,
3 after you had sent Tiger the telex on May 8, did there come
4 a time when you had a meeting with Tiger?

5 A. Yes. There came a time. What happened --

6 Q. Well, let me do it so the record is clear, Mr.
7 Hadl. When did that happen, sequentially, irrespective of
8 the date?

9 A. What I was going to say is after we sent them
10 the telex -- I'm trying to recollect -- I believe the next
11 thing that happened was they sent us a series of letters
12 after we sent them that second telex that we are referring
13 to.

14 Q. Let me put in front of you what has been marked
15 as Plaintiff's Exhibit 21 A. I will first ask you to read
16 Plaintiff's Exhibit 21 A.

17 (Pause)

18 A. The first paragraph?

19 Q. No. I want you to read the entire paragraph to
20 yourself rather than burden the court with this.

21 (Pause)

22 A. I have read it.

23 Q. Does that refresh your recollection as to when
24 you had a meeting with representatives of Tiger on this
25 matter of termination of their license agreement?

1 A. Well, it says here, "I told you last week." I
2 am hazy --

3 MR. KIRBY: Objection. The question was does it
4 refresh your recollection. I think from the record we are
5 entitled to an answer to that.

6 A. I am unclear, Mr. Fairhurst, as to whether I had
7 a meeting with them before they sent me the letters of May
8 18. I very vividly recollect a meeting after that. This
9 does not refresh my recollection that we had an actual
10 meeting or they were present in my office.

11 Q. But at some point you did have a meeting with
12 them, is that correct?

13 A. Yes, that is correct.

14 Q. Can you tell us, as best you can recall, how
15 that meeting came about?

16 A. The meeting came about because after we sent
17 them the telex saying that, "We think that your game looks
18 very much like the Donkey Kong game, that you have got
19 these diagonal chutes, that you have got barrels coming
20 down, that we think that we are very disturbed by that, and
21 we are not going to continue a license with someone who
22 looks like they are taking someone else's property even
23 though we may have a claim against that person that they
24 are taking our property."

25 He then sent me back a series of letters, I

1 think there were three letters. I remember them because
2 they were three separate letters under the same date in
3 which he made certain claims.

4 Getting through that, essentially what happened
5 is that I responded and then we had a meeting and they came
6 in and said "We will change the game" and they proceeded to
7 do that.

8 They came back and Mr. Rissman went to the Far
9 East, where whatever you do for the -- you know, the memory
10 or the design is put in. He came back shortly thereafter,
11 and this was all under some pressure because there was a
12 Consumer Electronics show in Chicago, and they wanted to
13 have the game ready and available for that time.

14 Q. Did you personally participate in the actual
15 meeting with Rissman?

16 A. When they came bank from Hong Kong, yes. Mr.
17 Rissman was there, his lawyer, Mr. Adler, Mr. Kaplan, Ms.
18 Sifuentes, if I remember, and I was there. They brought in
19 the material. We did not have a device at the studio to
20 play it. We got into Mr. Adler's car. We went to a Sears
21 Roebuck store in North Hollywood and Mr. Rissman hooked up
22 his game to one of the models in the store and showed us
23 the changes he had made.

24 Q. Were you satisfied with the changes?

25 A. Yes, I was.

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1 Q. Did you have discussions with Mr. Schwefel of
2 Coleco with respect to the Tiger game and changes to be
3 made in the?

4 A. Yes, I did.

5 Q. Could you tell us what you can recall of those
6 discussions which you yourself had with Mr. Schwefel?

7 A. I told Mr. -- well, Mr. Schwefel was concerned
8 about the Tiger arrangement.

9 Q. What was the nature of his concern?

10 A. His concern was that they were out with a
11 product which was substantially similar to his product. I
12 recollect because in the letters of May 18 there was a
13 letter from Coleco that had been written to Tiger telling
14 them that they were very concerned about the Tiger game.

15 Q. I will put in front of you, Mr. Hadl, the
16 letters I believe you have referred to on May 18. You
17 already have one of them -- that is 21 A. I am now going
18 to put in front of you 21 B, and I believe the letter to
19 which you refer is 21 B, is it not?

20 A. That is correct.

21 Q. And that was the letter from Mr. Kaplan to you?

22 A. Right.

23 Q. Is there an enclosure?

24 A. There is an enclosure to Tiger from David
25 Goldberg, a partner at Kaye Scholer, and who represented

1 Coleco.

2 Q. To whom?

3 A. Tiger Electronics.

4 Q. Did you have any discussions with Mr. Schwefel
5 in I which he advised you as to what Coleco's position was
6 with respect to the game?

7 MR. KIRBY: Objection, your Honor.

8 THE COURT: Overruled.

9 A. Yes. I did. Mr. Schwefel was concerned about
10 it. I then told him about the changes and indicated to him
11 that -- I'm trying to recollect this exactly in sequence.
12 I indicated to him that he would have an opportunity to
13 look at the revisions.

14 Q. Did there come a time, to your knowledge, that
15 Mr. Schwefel had that opportunity?

16 A. Yes, he did. He sent a lawyer to Chicago. This
17 was after we looked at the game in the Sears Roebuck store
18 with Ms. Sifuentes and Mr. Adler, and I felt that the
19 changes Mr. Rissman -- he changed what he called the chutes,
20 and he had changed them from the diagonal ones the way they
21 are in Donkey Kong to kind of horizontal and vertical ones,
22 and I believe he made other changes in the game. And I
23 advised Mr. Schwefel that he could view the game, and he
24 sent one of his counsel to Chicago to view it.

25 Q. And did he tell you, Mr. Schwefel, what Coleco's

1 position was as a consequence of that?

2 A. Yes. As a consequence he told me that he
3 believed that he would take no action. He would not put it
4 in writing, but he would take no action.

5 Q. When he told you that, do you recall was that a
6 face to face meeting, incidentally?

7 A. No. I believe that was -- no. That was on the
8 telephone.

9 Q. Did you subsequently have a face to face meeting
10 with Mr. Schwefel on this subject, among others?

11 A. Yes. We both went to the Consumer Electronics
12 show in Chicago and had a dinner meeting.

13 Q. What occurred at that dinner meeting?

14 A. Because in fact the Tiger game was being offered
15 at the show, and in fact Coleco was at that point out with
16 their new machine, and they were offering their thing, I
17 remember visiting both exhibits, and Mr. Schwefel took me
18 through the Coleco one.

19 We also had dinner that evening.

20 Q. What was said, as you remember, by Mr. Schwefel
21 with respect to the Tiger game?

22 A. Well, what was most important to me was that he
23 would take no action.

24 Q. Is that what he said?

25 A. That is correct.

1 Q. Did he give you an indication as to what the
2 basis of that decision was?

3 MR. KIRBY: Objection.

4 Q. Did he say anything to you?

5 MR. KIRBY: Objection, your Honor.

6 THE COURT: Overruled.

7 A. Yes. He told me that he thought that they had
8 made changes in the game, that there might still be a claim
9 but from a business point of view he felt it wasn't worth
10 pursuing and it would probably give them notoriety by
11 making a fuss about it and he didn't regard it as a very
12 important product in the market.

13 Q. Did you tell Mr. Schwefel that Universal would
14 be willing to have Tiger make changes in the game, if
15 necessary?

16 A. Well, I did that originally, and continued to.
17 That was our position.

18 Q. Okay.

19 A. I might say that the result of all that was then
20 that we entered into a subsequent agreement with Tiger
21 which amended the original license agreement in which we
22 gave them the right to continue to distribute, manufacture,
23 and sell the game. And there were some changes. There was
24 a variety of changes made in the arrangement.

25 Q. Now you are referring to the terms of the

1 settlement in the broader sense with Tiger?

2 A. That's right.

3 Q. All right.

4 Q. We are now approximately in mid May?

5 A. The reason I just said that is because we were
6 in June at the Consumer Electronics show, and by the time
7 we were in June though it wasn't committed to writing --
8 the agreement to Tiger didn't get finally committed to
9 writing for several months, but there was an understanding
10 at that point.

11 Q. Coming back to -- I want to go back in time and
12 go back on another plane, if I may.

13 A. Right.

14 Q. What was happening with Nintendo?

15 A. As I recall, there were several conversations
16 with Mr. Lincoln as to where they were, what was happening,
17 and I believe in those conversations he said to me they
18 were reviewing the matter, and there came a time when he
19 indicated that he wanted to come -- he was going to come
20 back down to Los Angeles with Mr. Arakawa.

21 Q. Did such a time come?

22 A. Yes. There was a luncheon meeting with just the
23 four of us, Mr. Sheinberg, myself, Mr. Lincoln and Mr.
24 Arakawa.

25 Q. What was the purpose of that meeting as you

1 understood it it?

2 A. As I understood the the purpose of this meeting
3 was to come to some resolution of our claim against
4 Nintendo.

5 Q. What occurred at the meeting?

6 A. To briefly describe it, the essence of the
7 meeting was Nintendo came down and said to us, "Thank you
8 very much, but there is no way we are going to work out an
9 accommodation or agreement with you."

10 I must say we were -- Mr. Sheinberg and I were
11 quite surprised by that strictly from the point of view we
12 felt Mr. Lincoln could have called us on the telephone and
13 said the same thing, and we regarded it as surprising that
14 both of them came all the way to Universal, we had an
15 extended lunch, talked about a variety of things, and at
16 the conclusion of the lunch there was no basis for
17 accommodation between us.

18 Q. You testified that you had several conversations
19 with Mr. Lincoln. I assume these were telephone
20 conversations?

21 A. That is correct.

22 Q. Go back to the meeting of May 6, Mr. Hadl.
23 During the course of that meeting was there any discussion
24 among the participants of that meeting of Universal's telex
25 which at that point had already been sent to both Coleco

1 and Nintendo in Kyoto?

2 A. When you say -- I am a little unclear what you
3 mean by discussion. Was there discussion of our rights?

4 Q. No. Let's do it the broadest way first.
5 Discussion of the telex itself, which I am going to put in
6 front of you again.

7 A. The essence of the discussion at the meeting was
8 our position was we owned the rights --

9 MR. KIRBY: Objection.

10 THE COURT: Sustained.

11 A. I am sorry. I told Coleco and the
12 representatives of Coleco and Nintendo --

13 MR. KIRBY: Objection. There is a question
14 pending.

15 MR. FAIRHURST: I will withdraw the question
16 and put another one.

17 MR. KIRBY: I ask it not be as leading as the
18 others.

19 MR. FAIRHURST: I will be happy to try to
20 accommodate you, especially since you are so successful in
21 your objections.

22 Q. Mr. Hadl, what did you say about the rights that
23 Universal claimed to own in the telex?

24 A. I told the representatives of Coleco and
25 Nintendo that we owned the rights in King Kong.

1 Q. Was there a discussion as a consequence of your
2 statement about the underlying nature of the those rights?

3 A. My recollection is that there was a discussion.

4 Q. What was the nature, what was the gist and
5 substance of that discussion, as you recollect it?

6 A. I believed that -- no. Coleco's lawyer who was
7 there, as well as either Mr. Lincoln or Mr. McGee, raised
8 the question as to what was the basis of our rights. I
9 referred them to Mr. Kroft.

10 Q. When you say you referred them to Mr. Kroft --

11 A. He was right there.

12 Q. Right. When you say you referred them to Mr.
13 Kroft, you mean you said, "Mr. Kroft, answer that
14 question." or "Mr. Kroft will answer those questions,
15 gentlemen."

16 What precisely do you mean by that?

17 A. I said to them Mr. Kroft was our counsel in the
18 matter, Mr. Kroft had extensively litigated this problem,
19 Mr. Kroft had assured me we had the rights, and if there
20 was any question they had about it they should discuss it
21 with him. I say that because this meeting had several
22 meetings. It broke up from time to time. There were
23 people --

24 Q. Caucuses?

25 A. Caucuses. People walked out of the room. I

1 believe at one point Coleco walked out with Nintendo. At
2 another point someone may have gone out individually. I
3 can't reconstruct it completely, but there were caucuses
4 during the meeting.

5 Q. Okay.

6 Now, in subsequent telephone conversations that
7 you had with Mr. Lincoln to which you have given testimony,
8 do you recall whether the subject of Universal's rights
9 came up again in those conversations?

10 A. I don't recall that specifically.

11 Q. To your knowledge, Mr. Hadl, did Mr. Lincoln --
12 well, strike Lincoln. Did Coleco -- excuse me, did
13 Nintendo's representatives contact Mr. Kroft, to your
14 knowledge?

15 A. Not to my knowledge.

16 Q. Did Mr. Kroft ever report to you that he had
17 been asked for a chain of title or to describe Universal's
18 rights?

19 MR. KIRBY: Objection.

20 THE COURT: Overruled.

21 A. Not to my knowledge.

22 Q. Insofar as your dealings with Mr. Kroft are
23 concerned, did you subsequent to receipt of the draft of
24 the telex that Mr. Kroft prepared, that you reviewed, and
25 that was subsequently sent out under Mr. Sheinberg's

1 signature to Nintendo and Coleco, have additional and
2 further discussions with Mr. Kroft about the nature of
3 Universal's rights, and so that we are perfectly clear
4 within the time frame I am addressing my question to I am
5 talking about from the time that telex was sent, April 28,
6 up to June, when the complaint was filed, and to be more
7 precise June 29, 1982?

8 A. Yes.

9 Q. That's the time frame I want to focus on.

10 A. Yes.

11 Q. What do you recall about those conversations
12 that you can tell us? First, what did Mr. Kroft tell you?

13 A. As the situation was evolving, I became more
14 involved with what was the basis and nature of the rights,
15 because it seemed to be a continuing question that was
16 being raised.

17 Mr. Kroft sent me at one point in May a rather
18 high pile of documents which he said were from his view
19 some of the more significant documents that related to the
20 PKO-King Kong litigation. The early conversations we were
21 having at the time focused more on -- focused, because it
22 was something I had heard about and I asked them to explain
23 more about -- was the claim that the copyright in the book
24 which formed the basis of the first King Kong picture was
25 in the public domain and that there had been a finding to

1 that effect, and what was the impact of that on our
2 position.

3 In our discussions of that Mr. Kroft advised me,
4 yes, there was such a finding, he said but the case had
5 been settled, that on appeal the, I guess Ninth Circuit,
6 had then vacated the judgment so there was some question in
7 vacating the judgment the findings were vacated, so the
8 question was what was the impact of that finding, and then,
9 secondly, that even if an aspect or an element in this
10 whole history of the book or an original underlying work
11 was in the public domain it didn't mean that subsequent
12 things, such as the motion pictures, were not still
13 protected and protectible and from whence our rights
14 derived, so that my concern about that particular side of
15 the was allayed.

16 I didn't feel that there was a major problem
17 there.

18 Q. Did you yourself, Mr. Hadl, review the documents
19 that Mr. Kroft sent you that you have referred to?

20 A. He sent them to me for two purposes. One, that
21 I should have them. But secondly at the time because we
22 were also considering retaining you, and sending you the
23 material necessary for the filing of a complaint.

24 Q. To your knowledge, did Mr. Kroft do anything to
25 implement the decision by Universal to bring a lawsuit, and

1 I am using that in the broadest sense?

2 A. Yes. Mr. Kroft prepared a draft complaint.

3 Q. Did you review that draft complaint when you
4 received it?

5 A. Yes, I did.

6 Q. Was a decision taken by Universal at some point
7 to institute a lawsuit?

8 A. Yes. After the meeting with Mr. Arakawa and Mr.
9 Lincoln, we decided to bring an action.

10 Q. Who made the decision, if I may put it this way,
11 as to where that lawsuit was to be instituted?

12 A. I did.

13 Q. What was the basis upon which you made that
14 decision?

15 A. The basis we made the decision had to do with
16 the speed with which we believed we could get the case to
17 trial.

18 We had had some experience that Mr. Kroft had at
19 that point with the Betamax case in Los Angeles which I
20 believe was then had been reviewed by the Ninth Circuit,
21 but had taken four years or more to get where it was, and
22 it was our judgment that we would get a speedier hearing
23 here in New York, that this district was in fact much
24 faster.

25 Q. To your knowledge, besides preparing the packet

1 of material to which you have referred; and this oral
2 discussion you had with Mr. Kroft, did Mr. Kroft do any
3 other acts of which you were aware to -- I am going to use
4 the term prepare for the lawsuit?

5 A. I believe he was in contact with you.

6 Q. Aside from that.

7 MR. FAIRHURST: If your Honor will permit a
8 leading question.

9 Q. Did there come a time when an assignment was
10 secured from RKO?

11 A. Right.

12 THE COURT: Mr. Kirby's objection is sustained.

13 MR. FAIRHURST: Does that mean I can't talk about
14 this, your Honor?

15 THE COURT: What happened next?

16 Q. Yes. What happened next?

17 A. Frankly, at the moment --

18 Q. I will see if I can refresh his recollection,
19 your Honor. I am going to do it the legitimate way. We
20 will take a little time here.

21 THE COURT: I don't believe it.

22 Q. I am going to put in front of you what has been
23 marked and already accepted in evidence as Plaintiff's
24 Exhibit 53.

25 Q. Does that refresh your recollection as to

whether an event occurred?

A. Yes.

Q. Tell us how it refreshes your recollection?

A. In discussing the filing of the complaint with Mr. Kroft, the question became whether or not RKO was a necessary party to the action.

Q. What do you recall Mr. Kroft told you?

A. Mr. Kroft said he thought there was a question about that.

Q. What was the nature of that question?

A. The question was because our rights came through Mr. Cooper that it had been decided that RKO was the trustee for the merchandising rights, and held them in trust for Mr. Cooper. We had paid Mr. Cooper I believe something like \$200,000 for the rights, and there was a question as to whether or not, given the nature of this action, that RKO might have some interest in it, and, therefore, that they should be named as a party.

His suggestion was that rather than name them as a party and serve them, that we should consider whether or not we couldn't get an assignment from them to obviate the procedural problems involved.

Q. Did you yourself have any dealings with RKO to secure that assignment?

A. Yes.

1 Q. With whom did you deal?

2 A. I dealt with a gentleman whose name I believe is
3 Arnold Kaufman. I talked to him on the telephone.

4 Q. What was the nature of those discussions, if
5 there was more than one?

6 A. I explained to him what the situation was and
7 asked him whether or not they would be willing to give us
8 an assignment.

9 Q. Can you infer from the fact we have the exhibit
10 that they did?

11 A. That is correct.

12 Q. Did there come a time, Mr. Hadl, when you
13 learned of what it was specifically that Mr. Kroft had said
14 or done in the RKO 1975 litigation in the federal court
15 action with respect to the issue of King Kong and the
16 public domain?

17 A. As I indicated to you before in terms of the
18 copyright in the book we were talking about that in the
19 month of May.

20 Q. At that point you had not actually seen the
21 transcript of proceedings in the RKO federal court action?

22 A. No. He sent me a fairly big pile of materials
23 which I recollect going through, but not reading. That is
24 to say line by line.

25 Q. Did there come a time you actually read or were

1 A. My recollection is it was staggered. I think
2 the total consideration was \$150,000.

3 Q. Incidental, does MCA, Inc. now employ Charles
4 paul, Skip Paul?

5 A. That's correct.

6 Q. Can you tell us when he was employed by MCA?

7 A. I believe within the last two weeks.

8 Q. Now, going back to Miss Sifuentes, you testified
9 that you had a discussion with her in which you expressed
10 upsetment over her having licensed Tiger?

11 A. Yes.

12 Q. So we are absolutely clear: You have read Miss
13 Sifuentes' deposition testimony?

14 A. Her entire testimony?

15 Q. No. Strike that question.

16 Have you read Miss Sifuentes' deposition
17 testimony in this case?

18 A. I have not read her entire deposition.

19 Q. You have read excerpts from it?

20 A. Yes, I have.

21 Q. You are aware that she testified at deposition
22 to having told you of a conversation or discussion she had
23 with Mr. DiMuro in which Mr. DiMuro came to a decision that
24 Universal had no rights in King Kong; are you not?

25 A. Yes.

Q. Did she ever advise you of that decision, alleged decision? Did you ever have a discussion of it with her?

A. She never advised me and I never had a discussion.

Q. Now, Miss Sifuentes is no longer employed at Universal; is that correct?

A. That's correct.

Q. What is your understanding as to the basis upon which her employment ended?

A. My understanding is she was fired.

Q. Was her discharge in any way, to your knowledge, related to Donkey Kong and King Kong?

A. Not to my knowledge.

Q. Do you have personal knowledge, Mr. Hadl, as to any matters on which she worked which may have contributed to her discharge?

A. Yes, I do. I was involved with a subsequent matter which happened about within 60 to 90 days subsequent to these event.

Q. When you say these events--

A. The May-June period of 1982 involving King Kong and Donkey Kong, involving ET and an analogous situation, the home video rights for ET.

Q. Without going into all the details, can you tell

1 us in substance what the problem was?

2 A. The problem was essentially that the rights for
3 an educational toy, a speak and spell model, that was done
4 by Texas Instruments had been given to Texas Instruments in
5 a way and drafted in such a manner that Texas Instruments
6 was able to claim that the entertainment rights for home
7 video depiction of ET were included within that grant and,
8 therefore, Universal had -- I had to spend considerable
9 time dealing with and ultimately settling out with Texas
10 Instruments that problem so that Universal was in a
11 position to license the home video/TV rights to Atari.

12 MR. FAIRHURST: I have nothing further.

13 CROSS-EXAMINATION

14 BY MR. KIRBY:

15 Q. Good morning, Mr. Hadl. My name is John Kirby.
16 You will recall we met before when your deposition was
17 taken?

18 A. Yes, I do.

19 Q. Do you recall when that was?

20 A. I recall it was in 1982.

21 Q. Mr. Hadl, you have testified that at some point
22 in your employment at MCA that you were given an additional
23 job of supervising Universal's litigation and its use of
24 outside counsel; is that correct?

25 A. That's correct.

1 course of Mr. DiMuro working with you on drafting the
2 Coleco agreement did you become aware that he was widely
3 experienced in matters involving King Kong.

4 A. I would say the answer to that is no.

5 Q. Prior to asking Mr. DiMuro to participate in the
6 Coleco draft with you, how many conversations had you had
7 with Mr. Kroft in connection with what ultimately became
8 this lawsuit? I am asking for a number; how many?

9 A. I can't recall.

10 Q. Well, let's see if we can do it together.

11 You had one conversation when you sent him out
12 to play the game, Donkey Kong; is that correct?

13 A. That's correct.

14 Q. Can you place that in time?

15 A. Yes, I believe I testified it was in early April.

16 Q. In early April of 1982. And you testified that
17 there was a second conversation when Mr. Kroft reported to
18 you I've played the game?

19 A. That's correct.

20 Q. And you testified that in the course of that
21 conversation, after hearing that statement and his
22 statement that you have a claim, that you said prepare some
23 kind of notification and draft a complaint; is that correct?

24 A. That's correct.

25 Q. That's the same conversation?

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1 A. I don't recall that specifically.

2 Q. You testified on direct--

3 A But you are asking me how many conversations. I
4 don't recall whether it was that conversation or possibly a
5 next one. We can assume that or we can assume not.

6 Q. I don't want to assume anything, Mr. Hadl. As
7 court closed yesterday you testified that Mr. Kroft called
8 you back, said that he had played the game and that he
9 thought you had a claim and that you responded draft a
10 telex, draft a complaint; do you recall giving that
11 testimony yesterday?

12 A. Oh, yes.

13 Q. Are you now telling us that that was more than
14 one conversation?

15 A. No. But I didn't think that was your last
16 question.

17 Q. All right. Now we have I guess agreed that you
18 had two conversations that we have identified with Mr.
19 Kroft?

20 A. Yes, we have.

21 Q. And I believe you testified that you didn't have
22 any further discussion in that second conversation with Mr.
23 Kroft about the nature of Universal's rights in King Kong;
24 is that correct?

25 A. That's correct. What we discussed, as I have

1 testified, was whether or not we felt the Donkey Kong was
2 an infringement, not whether or not we had the rights. Our
3 respective points of view of whether this was similar or
4 substantially similar to King Kong.

5 Q. Let's talk about this second conversation. Did
6 Mr. Kroft ask you any questions?

7 A. I don't recall. You will have to be more
8 specific.

9 Q. Let me ask you this: Did Mr. Kroft ask you
10 whether Universal was merchandising King Kong in that
11 second conversation?

12 A. Not that I recall.

13 Q. Did Mr. Kroft ask you whether Universal was
14 making any King Kong movies in that second conversation?

15 A. Not that I recall.

16 Q. Did Mr. Kroft ask you whether you had any, you,
17 Universal/MCA, had any licenses outstanding for use of King
18 Kong?

19 A. Not that I recall.

20 Q. As a matter of fact, you didn't even know
21 whether Universal had any licenses outstanding for King
22 Kong at the time of that second conversation, did you?

23 A. That's correct.

24 Q. And you didn't know whether Universal was, in
25 fact, merchandising King Kong, did you?

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1 A. At the time of the second conversation with Mr.
2 Kroft, that's correct.

3 Q. As a matter of fact, you didn't know anything
4 about Universal's use of King Kong when you had that second
5 conversation with Mr. Kroft, did you?

6 A. No. I relied on Mr. Kroft.

7 Q. So it's fair to say that you didn't inform Mr.
8 Kroft of anything because you didn't know anything about
9 Universal's use of King Kong, did you?

10 A. No. I informed Mr. Kroft that we thought we had
11 a claim and I wanted him to go play the game.

12 Q. Did Mr. Kroft tell you that he knew that
13 Universal had -- in this second conversation -- outstanding
14 licenses for the use of King Kong?

15 A. No.

16 Q. And I believe you testified yesterday that as
17 far as you know no one from Universal, other than yourself,
18 had discussed this possible litigation against the
19 manufacturer of Donkey Kong, other than you, you were the
20 only one that spoke to Mr. Kroft?

21 A. That's correct.

22 Q. During the course of that conversation, did Mr.
23 Kroft say to you, Joe DiMuro is a man who knows a great
24 deal about King Kong matters?

25 A. Not that I recall.

A2527

1 Q. Did Joe DiMuro's name come up during that
2 conversation?

3 A. Not that I recall.

4 Q. After that second conversation, when was the
5 next conversation you had with Mr. Kroft?

6 A. The next one I can be certain about would be
7 after Mr. Sheinberg had the lunch with Mr. Greenberg.

8 Q. All right. That's the conversation you have
9 already testified about. That was the conversation when
10 you called Mr. Kroft and said, in effect, as clients
11 sometimes do, what the heck is going on, where is my telex
12 and where is my complaint; is that that conversation?

13 A. To the best of my recollection.

14 Q. So that conversation we put as sometime after
15 April 27th?

16 A. If that's the date of the lunch.

17 Q. That's the date of the lunch.

18 Do you know what date the telex was sent?

19 A. I saw it just a little while ago. It was April --
20 I believe it was April 28th.

21 Q. And the lunch was April 27th. Does that mean
22 that this third telephone conversation with Mr. Kroft was
23 on April 27th or sometime on April 28th?

24 A. Frankly, Mr. Kirby, I don't recall and I don't
25 recall whether or not there might have been a conversation

1 Is it your testimony now that if you saw a draft
2 prior to the luncheon that Mr. Sheinberg had with Mr.
3 Greenberg that you saw it on the day before that luncheon?

4 A. I couldn't tell you a specific date.

5 Q. I thought I heard you say April 26th?

6 A. I said it could have been.

7 Q. Let me ask you this, Mr. Hadl: We now have
8 three conversations that you recall and maybe another one
9 that you don't recall. In any of those conversations did
10 Mr. Kroft ask you any questions about what Universal was
11 doing with respect to King Kong, any of those three
12 conversations?

13 A. Not that I recall.

14 Q. And at the time the telex was sent to Nintendo
15 on April 28th, you personally still didn't know anything
16 about what Universal was doing with respect to King Kong,
17 did you?

18 A. King Kong merchandising?

19 Q. King Kong merchandising.

20 A. I answer yes.

21 Q. Did you know anything about what Universal was
22 doing with respect to King Kong movies on April 27th or
23 April 28th?

24 A. No.

25 Q. So the question did you know anything about what

1 Greenberg said at that lunch is Mr. Sheinberg, right?

2 A. That's correct.

3 Q. Let me ask you this: As part of your kind of
4 director of litigation responsibilities, did you ever have
5 occasion to read what Mr. Greenberg said about that lunch?

6 A. I think Mr. Greenberg has given a deposition in
7 either this or a related case and I have not read it.

8 Q. Did anyone tell you what he said about that
9 lunch?

10 A. I think -- I know that the only thing I have
11 heard as to the now famous statement "what took you so long?"
12 He characterized it as what took you so long to find out
13 that we were going to do Donkey Kong, not what I understood
14 it to mean. He recharacterized it.

15 Q. He recharacterized, as far as you were concerned,
16 because you were listening to Mr. Sheinberg's
17 characterization, right, and that's your only source of
18 knowledge about that lunch?

19 A. That's absolutely correct.

20 Q. As a matter of fact, by April 28th, Mr. Hadl,
21 you had investigated, hadn't you, how long Donkey Kong had
22 been on the market? The answer to that is just yes or no.
23 Had you investigated how long Donkey Kong had been on the
24 market by April 28th?

25 A. At some point I knew it had been on the market

1 since the previous year and I think it was the previous
2 summer. I can't recollect whether I had that information
3 by April 28th.

4 Q. Let me make it more precise because maybe this
5 will help refresh your recollection.

6 At the time that telex was sent out from
7 Universal, did you know how long Donkey Kong had been on
8 the market?

9 A. I think I just answered that. I said that I
10 knew at some point that it had gone out the prior year and
11 I believe it was the prior summer that it had been put into
12 the arcades. But I didn't recollect at what point I became
13 exactly aware of that time frame.

14 Q. At the time you sent the telex, had you
15 conducted any investigation to learn how many Donkey Kong
16 machines had been sold?

17 A. At the time I sent the telex?

18 Q. Yes.

19 A. My best recollection is no.

20 Q. Had you caused a trademark search to be made to
21 determine whether or not Nintendo had on file a trademark
22 application for Donkey Kong? Are you shaking your head?

23 A. I am thinking. Not to the best of my
24 recollection, no.

25 Q. Had you asked Mr. Kroft to have that done?

1 A. No.

2 Q. At the time the telex was sent, did Mr. Kroft
3 report to you that he had in fact had a trademark search
4 done, at the time the telex was sent, Mr. Hadl?

5 A. I don't recollect, I don't remember.

6 Q. At the time the telex was sent, Mr. Hadl, did
7 you have in your hands or had you caused to be made a
8 trademark search for King Kong, at the time the telex was
9 sent?

10 A. My answer is no. The reason I say no is I
11 believe the first -- I believe -- my recollection is that
12 the first time the question of a search came up was at the
13 meeting of May 6 with either Mr. Schwefel's counsel or Mr.
14 McGee. I have some recollection of a discussion of a
15 search at that meeting.

16 Q. So somebody from -- if I can characterize it
17 this way and I realize this is inaccurate -- the other side?

18 A. Yes.

19 Q. Of Universal, Nintendo or Coleco said something
20 about having done a search themselves?

21 A. That's correct.

22 Q. Let me ask you this: When that meeting broke up,
23 did you ask to have a trademark search done for Universal?

24 A. No, not to the best of my recollection.

25 Q. Now, between the time the telex was sent, Mr.

1 Hadl, and this meeting of May 6, did you have any telephone
2 conversations with Mr. Kroft?

3 A. I can't recollect specifically but I assume I
4 did because he came to the meeting of May 6 and I assume I
5 talked to him before the meeting.

6 Q. But you don't recollect any conversation today?

7 A. Not a specific conversation.

8 Q. Do you recollect a general conversation or are
9 you just inferring that you must have told him about the
10 time of the meeting?

11 A. Yes, I am inferring that.

12 Q. So you have no recollection, general or specific,
13 about any conversation with Mr. Kroft between April 29 and
14 May 6?

15 A. I have a recollection that he came to my office
16 some period of time before the other people arrived for the
17 purpose of --

18 Q. What other people?

19 A. The people from Coleco and Nintendo.

20 Q. How long was he there before anyone from Coleco
21 arrived?

22 A. My recollection is it was a short period of time
23 not something like he was there all day before they came.

24 Q. When did they come?

25 A. I don't recollect.

A 2533

1 Q. Before lunch?

2 A. I'm sure somebody else knows that. I can't tell
3 you that right now.

4 Q. Did you have a discussion with Mr. Kroft about
5 the upcoming meeting when he came to your office sometime
6 before these people arrived?

7 A. That would have been the purpose for him coming
8 early.

9 Q. I didn't ask you whether that would have been
10 the purpose. I asked you did you, in fact, have a
11 discussion with him about the upcoming meeting.

12 A. Yes, I would have.

13 Q. Did you or didn't you?

14 A. To the best of my recollection, he came early
15 and we had a discussion.

16 Q. And you don't remember how long it was?

17 A. No, that I don't are recollect.

18 Q. Do you remember what was said during the course
19 of that discussion?

20 A. Yes. We would have discussed --

21 Q. No. The question is do you remember, yes or no?

22 A. Yes. I would have said to him I conduct the
23 meeting, that I would lead the discussion and I would like
24 him to participate to the extent questions arose to which
25 he could respond.

A2534

1 Q. Did you tell Mr. Kroft, based on your
2 discussions with Mr. Schwefel, that you expected certain
3 questions to arise during the course of that meeting?

4 A. Not that I recollect.

5 Q. Let me ask you specifically, Mr. Hadl: Did you
6 tell Mr. Kroft that you expect the question of what rights
7 Universal had in King Kong to come up at the meeting?

8 A. I don't recollect that specific exchange.

9 Q. Do you recollect Mr. Kroft saying that he would
10 be ready to deal with that matter if it came up?

11 A. I don't recollect that, but I would assume that
12 that's what we said.

13 Q. I am not interested in your assumptions.

14 A. Okay.

15 Q. Do you recollect whether he said that?

16 A. No, I can't recollect that. I can't recollect
17 the conversation at this moment.

18 Q. During this little preliminary meeting with Mr.
19 Kroft, did you discuss Mr. DiMuro?

20 A. The answer is no. As I have said before, I am
21 having trouble recollecting. I can only give you at this
22 moment what my best view is as to what Mr. Kroft and I
23 would have discussed at that meeting. I can say with some
24 greater certainty that we would not -- that I do not
25 remember discussing Mr. DiMuro.

A2535

1 A. No, not to my -- no. I don't recall any
2 extensive conversation at the meeting about the rights.

3 Q. Is it fair to say, Mr. Hadl, based on your
4 testimony, that when you went into that meeting on May 6
5 you didn't personally know anything about Universal's
6 rights in King Kong, you?

7 A. You mean personally from firsthand knowledge
8 having gone through the RKO proceeding?

9 Q. Personally from any source.

10 A. Personally, I knew what Mr. Kroft had told me.

11 Q. Is it your testimony that Mr. Kroft told you,
12 you, Universal, owned the rights in King Kong?

13 A. He told me -- yes.

14 Q. Did he tell you that?

15 A. Wait. Let's be careful. What Mr. Kroft advised
16 me going back was that I was on firm ground to bring this
17 complaint and this action.

18 Q. Well, that wasn't my question, was it? In the
19 meeting you stated to Coleco and Nintendo Universal owns
20 the rights in King Kong.

21 Now, my question to you was: Did you personally
22 know anything about Universal's rights in King Kong at the
23 time that statement was made at the meeting?

24 A. Well, I believe I have testified this morning
25 that between the time the telex was sent, starting in that

1 Q. That's right. You got it.

2 A. I think Mr. Kroft and I would have had several
3 conversations. We had a question about where we were going
4 to file the complaint. We had a question about who was
5 going to represent us in New York. I would have advised
6 Mr. Kroft about the Tiger matter. So I would have
7 discussed those three things with Mr. Kroft. And I think I
8 also indicated there was a point in May when Mr. Kroft sent
9 me a stack of materials.

10 Q. Which you didn't read?

11 A. Well, that's your --

12 Q. You testified, Mr. Hadl, this morning and in
13 your deposition that you didn't read them, you leafed
14 through them and sent them on to Mr. Fairhurst?

15 A. That's correct.

16 Q. You didn't read them?

17 A. I didn't read them line for line, that's right.

18 Q. So your discussions with Mr. Kroft were where do
19 we file the complaint, who represents us?

20 A. Right.

21 Q. You advised him about Tiger?

22 A. Right.

23 Q. And at some point you talked with him about the
24 public domain status of the book?

25 A. That's correct.

A2536

1 Q. Anything else between May 6 and the time the
2 complaint was filed?

3 A. Not that I recollect.

4 Q. Do you get involved in the movie business at
5 there at your studio lot?

6 MR. FAIRHURST: What is this Wyoming, your Honor?

7 Q. Do you understand the question?

8 A. No, I don't.

9 Q. Do you have anything to do with Universal's
10 movie studio operation?

11 A. I still don't understand the question. What do
12 you mean by the studio operation?

13 Q. When Universal is considering producing a movie,
14 do you get involved in that?

15 A. You mean as to which property we're going to
16 choose to make a movie?

17 Q. Yes, that kind of thing.

18 A. Slim to none, rarely.

19 Q. Do you get involved in legal matters relating to
20 the production of movies?

21 A. The dividing line is between something which is
22 inside versus outside, litigation versus nonlitigation
23 legal problems. Those kind of problems would be handled by
24 the law department and by the house counsel.

25 Q. I think I know the answer to this question, Mr.

1 Hadl, but maybe you can help me.

2 Based on your testimony to date, is it true that
3 you did not know that three weeks prior to your sending the
4 telex to Nintendo and about four weeks before your meeting
5 that Mr. DiMuro had written to Mr. Sheinberg and stated "RKO
6 owns the visual representation of the King Kong ape" and
7 had gone on to include guidelines among which were the
8 Universal ape must be designed as an independent original
9 creation without reference to stills or other reproduction
10 of RKO's ape or DiLaurentiis' ape, you didn't know that
11 when that telex was sent, did you?

12 A. No, I did not.

13 Q. You didn't know he had sent the memorandum?

14 A. No.

15 Q. And you didn't know that the position in that
16 memorandum related to Mr. Sheinberg was that RKO owns the
17 visual representation of the King Kong ape, you didn't know
18 that either, did you?

19 A. No.

20 Q. And you didn't have any knowledge, when you sent
21 that telex, of who owned the visual representation of the
22 ape, did you?

23 A. No.

24 Q. Now, I know it's difficult for you to recall
25 some of these conversations, Mr. Hadl, but between May 6

1 A. Well, it's speculation, but I think it's --

2 Q. I am not interested in that.

3 A. Okay.

4 Q. If you know that Miss Sifuentes and Mr. Adler
5 entered into the Tiger license without consulting anyone at
6 the law department, then you can tell us?

7 A. I can't tell you that.

8 Q. But Miss Sifuentes did serve as Mr. Adler's
9 lawyer in many of the merchandising matters; you do know
10 that?

11 A. That's right and --

12 MR. FAIRHURST: Your Honor, we are getting
13 cutting off here and I understand Mr. Kirby's enthusiasm
14 and I respect it. Please, let the witness answer and let
15 me hear it. We have colloquy here constantly and it's been
16 going on for five minutes. I can't hear what the witness
17 is saying when Mr. Kirby does it.

18 THE COURT: Have you finished your answer, Mr.

19 Hadl?

20 THE WITNESS: Yes, I have.

21 Q. By the way,, Mr. Hadl, do you know what Mr.
22 Adler is doing now?

23 A. I don't know personally. I have only heard from
24 my counsel.

25 Q. Well, tell me what you have heard.

MR. FAIRHURST: As long as Mr. Kirby doesn't regard this as an immense waiver of attorney-client privilege, I will not invoke it. If he wants to use this to open a door to some further thing I will invoke it.

MR. KIRBY: I think I am not intending to get anything other than the information in response to this question on the record.

A. That Mr. Adler is engaged in a similar pursuit of being involved in the merchandising business.

Q. He has his own company?

A. Yes.

Q. And Miss Sifuentes is one of his colleagues in that company, isn't she?

A. I believe she has rejoined him I don't believe that --

Q. So the Sifuentes/Adler team has reformed outside the aegis of Universal/ MCA; is that your understanding?

A. Yes.

Q. Let me ask you this, Mr. Hadl: As far as you can remember, based on your testimony -- tell me if I am wrong on this -- you didn't have any knowledge about Mr. DiMuro's extensive involvement and knowledge of the King Kong property as of the time you called him to draft a licensing agreement -- strike that. I don't want to get into any quarrels -- to draft an agreement with Coleco that

1 Q. And after you received Plaintiff's Exhibit 54,
2 which is a memorandum from Miss Sifuentes to you talking
3 about King Kong merchandising, when the author of every
4 memorandum that she attaches is Joseph V. DiMuro, you knew
5 then that Mr. DiMuro was a pretty central figure in King
6 Kong at Universal, didn't you?

7 A. You are assuming something again. I believe
8 when Mr. Fairhurst showed me this morning I said to him I
9 looked at this before the trial but I didn't have a direct
10 recollection of it, that I believed Miss Sifuentes sent
11 this to me not in response to something I requested and I
12 wasn't sure the extent to which I had analyzed it carefully
13 when I received it.

14 At that point in time I was -- as indicated -- I
15 had had a conversation with her in which I had expressed
16 some disturbance at how the Tiger -- about the Tiger matter.

17 So I think that's the answer.

18 Q. As a matter of fact, at the time she sent this
19 this memorandum, you were angry as hell with her, weren't
20 you, because she had licensed the King Kong property to
21 Tiger?

22 A. That's what I have testified.

23 Q. And you yelled at her, didn't you?

24 A. Well, I don't recall yelling at people. But we
25 could have had an angry exchange along the lines of, you

1 know, how come you let this valuable property go for \$15,000.

2 Q. Was that the total consideration that Tiger paid?

3 A. That number sticks in my head. You can refresh
4 my recollection that it's more or less. That's the number
5 that sticks in my head.

6 Q. Did they pay a royalty?

7 A. Are you saying at that time had they paid a
8 royalty?

9 Q. Did the agreement call for a royalty payment?

10 A. I believe the agreement called for some royalty
11 payment. I think the \$15,000 was either an advance or
12 guarantee.

13 Q. You didn't want to leave the court with the
14 impression that Miss Sifuentes had given away the King Kong
15 property for you said 15,000 to Tiger, did you?

16 A. I think I have just testified as to what I think
17 the deal was.

18 Q. And during this period from May, after your
19 telex was sent in April and May 12 you were, to use your
20 counsel's words, dealing on a lot of planes, weren't you?
21 You were expressing your anger to Miss Sifuentes about the
22 King Kong property licensed to Tiger; you were whipping
23 into shape the Coleco agreement which you had entered into
24 in principle on May 5 or before; you were dealing with
25 Nintendo about the King Kong property; you may have been

1 having conversations with Mr. Kroft, you are not really
2 sure whether you had any during that period but you know he
3 was there at that meeting and you get a packet of materials
4 relating to "subject King Kong" from the object of your ire,
5 Miss Sifuentes, with Mr. DiMuro's name all over every
6 memorandum, and it's your testimony here today you didn't
7 read it?

8 A. Mr. Kirby, with due respect, you have just said
9 a lot and you are asking me to say yes to everything?

10 MR. KIRBY: Your Honor, may we have the question
11 read back in the witness needs it?

12 THE COURT: Sure.

13 MR. KIRBY: Would you listen carefully as it's
14 read back, Mr. Hadl.

15 THE WITNESS: Sure.

16 (Record read)

17 A My testimony is that I don't recall whether I
18 read it on May 12th. At some point I saw this material.

19 Q. Well, let me ask you this: Maybe this will help
20 refresh your recollection as to this question. You have
21 testified you asked Mr. DiMuro's assistance on redrafting
22 or drafting an amendment to the Tiger agreement, right?

23 A. Pardon me. Could you repeat that?

24 Q. You testified that you asked Mr. DiMuro's
25 assistance at some point in drafting an amendment to the

1 drafted sometime subsequent to June of 1982?

2 A. That's correct.

3 Q. But the agreement with Tiger was entered into
4 sometime in June in 1982?

5 A. I don't think that agreement was signed until
6 the fall, like September or October and I think that until
7 it was signed there was, in fact, not a total meeting of
8 the minds. I can't recall exactly but I think there were
9 one or two provisions that were in dispute.

10 Q. At any time--

11 A I think the critical point was that the Tiger
12 game was out at the consumer electronics show in June and
13 that it was on the market and it was being marketed.

14 Q. At any time prior to June 29, 1982, did you have
15 any discussion with Joseph DiMuro with respect to Universal's
16 rights in King Kong?

17 A. I don't remember.

18 Q. Did you, other than Plaintiff's 54 presently
19 before you, which consists of Miss Sifuentes' cover note "subject
20 King Kong" and the series of memoranda, letters, et cetera
21 in which Mr. DiMuro was involved, did you receive anything
22 in writing from Mr. DiMuro on the subject of Universal's
23 rights in King Kong?

24 A. Not that I recall.

25 Q. Did you direct a question to anyone within

1 Universal as to whether there was anyone on the in-house
2 staff who had that expertise in King Kong?

3 A. Not that I recall and the reason for that is
4 that the matter was a matter of litigation. We do not
5 handle any litigation in-house at MCA. All our litigation
6 is handled by outside counsel and it would be our normal
7 practice and procedure to be -- to have outside counsel
8 retained if we were filing a complaint in a court.

9 Q. The complaint was filed on June 29th, right?

10 A. That's correct.

11 Q. Before that time the matter wasn't in litigation,
12 was it?

13 A. No. On April 28th we had sent a telex making
14 perfectly plain we were going to start litigation.

15 Q. Indeed, you had made a decision to start
16 litigation well before April 28th, hadn't you?

17 A. That's correct, when I talked to Mr. Kroft I
18 said prepare a complaint.

19 Q. Right, after he told you about playing the game
20 and you had a complaint, you told him prepare a complaint.

21 Who made the decision to assign Mr. DiMuro
22 responsibility for handling the Nintendo litigation from
23 the in-house aspects?

24 A. You're saying after the complaint was filed.

25 Q. I don't know when. I said who made the decision.

1 you formulated that opinion?

2 A. No, I had not.

3 Q. Okay. Had you seen the 1933 movie King Kong?

4 A. No, I had not.

5 Q. Had you seen the 1976 movie King Kong?

6 A. Yes, I had.

7 Q. Had you seen any product licensed by Universal--

8 A. By the way, my children had also seen the movie.

9 Q. Thank you.

10 Had you seen any product manufactured under
11 license by Universal for King Kong?

12 A. No.

13 Q. And so when you say substantially similar, the
14 only King Kong thing that you had seen was the 1976 movie
15 and that's what you were referring to, wasn't it?

16 A. That's correct.

17 Q. Did you tell Mr. Sheinberg that that's what you
18 meant, looks like the 1976 movie to me Sid, did you tell
19 him that; did you say that in words or substance to Mr.
20 Sheinberg?

21 A. Mr. Kirby, I think what I told him and what I
22 have testified to was that I thought we had a claim and as
23 a result of the conversation with Mr. Sheinberg I called
24 Mr. Kroft, asked him to go and play the game and then he
25 came back to me. He played the game and he confirmed my

Q Did Mr. Sheinberg suggest, when you made that call to him and told him you thought we had a claim, that you consult with Joe DiMuro?

A No, he didn't. The answer is "no."

Q He didn't?

A No.

Q Did you know at that time that Mr. Sheinberg apparently made a practice of referring just about every call relating to King Kong to Mr. DiMuro?

Did you know that?

A No, I did not.

Q And you already testified that you didn't know that probably within a day or two Mr. Sheinberg had on his desk a memorandum addressed to him from Joe DiMuro, Subject King Kong, with a lot of guidelines about using King Kong, April 8, 1982, just about the time you got that buckslip and played the game; right?

A No, but what I did know was Mr. Kroft was the outside counsel who handled the King Kong Matter, that this was a matter that was potentially going to go to litigation, and it was no, therefore, something that would be handled in house, it would be something to be handled by outside counsel, and Mr. Kroft, having spent years in the King Kong matter, was the man to handle it.

1 Q It is certainly not your testimony, is it,
2 that every claim that Universal wakes up feeling like
3 asserting against someone that you immediately pick up the
4 phone and call outside counsel, is it?

5 MR. FAIRCHILD: I object to form.

6 THE COURT: Sustained as to form.

7 Q Mr. Hadl, do you remember that memorandum that
8 your boss sent to everybody at Universal setting out what
9 your new duties and responsibilities were? Do you remember
10 that memorandu, yes or no?

11 A Yes. You asked me about it before.

12 Q Do you remember your testimony about that was if
13 a legal matter arose try to have it handled by in house
14 legal department, and failing that refer it to outside
15 counsel? Do you remember that memorandum?

16 A I remember that.

17 I don't see, you know, that necessarily would apply
18 here. This was a matter in which we were affirmatively
19 going to need outside counsel to file an action against
20 somebody else.

21 A Is it your testimony, Mr. Hadl, that whenever
22 Universal believes that there is a product infringing on
23 one of its rights that the matter is immediately turned over
24 to outside counsel without any consultation in house?
25 Is that your testimony?

1 A Could I hear the question again?

2 THE COURT: Certainly.

3 (Question read.)

4 A When you say immediately here, I think that is
5 the problem I was having. The difference here is, right,
6 Mr. Sheinberg sent me something, said, "I think this is a
7 problem," I went out, played the game, and was convinced
8 in my own mind that in fact there was not only a valid
9 but I felt a strong claim here, and given the responsibilities
10 I had there was nobody further to consult with at this
11 point. This matter needed to be handled by outside
12 counsel.

13 We've had that arise on one or two other
14 occasions, and I have done the same thing.

15 Q Okay.

16 Now, Mr. Sheinberg did not tell you to consult
17 Joe DiMuro?

18 A That's correct.

19 Q And after that conversation when you reported
20 back, followed up by placing your call to Mr. Kroft,
21 when was the next conversation you had with Mr.
22 Sheinberg about the subject Donkey Kong or King Kong?

23 A I would -- well, here we go again.
24 I can't give you -- I know we had a conversation after we
25 had lunch with Mr. Greenberg. Did we have a conversation

md

send the telex.

Hadl- cross

720

Q Okay, okay. And Mr. Sheinberg told you about that?

A That's correct.

Q Okay. And then the telex was sent?

A That's correct.

Q And as I understand it from what your testimony is, Mr. Hadl -- and you correct me -- that on April 28th when that telex was sent Universal had done the following things:

One: Mr. Sheinberg had read or heard something about Donkey Kong, and contacted you.

Two: You and your children had played the game, Donkey Kong.

Three: You had told Mr. Kroft to play the game. Mr. Kroft played the game and said, "I think we've got a claim," and you said, "Draft a complaint and a notification."

Then Mr. Sheinberg, to precipitate the telex, reported to you his view of what Mr. Greenberg of Coleco meant when he said in words or substance, "What took you so long? Why are you raising the subject now?" And then the telex was sent. Is that correct?

A You have characterized "What took you so long" differently, but --

1 Q Forget how it is characterized. That
2 conversation was reported to you?

3 A Yes.

4 Q And then the telex was sent?

5 A Yes.

6 Q Nothing else?

7 A From my knowledge, nothing else.

8 THE COURT: Can I suggest we resume after
9 lunch.

10 MR. FAIRCHILD: A good suggestion.

11 MR. KIRBY: Thank you. Judge.

12 THE COURT: Two o'clock.

13 (Adjourned to 2:00 p.m.)
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1 A. No.

2 Q. That subject just didn't come up?

3 A. That's correct.

4 Q. Now, is it fair to say, Mr. Had1, based on your
5 testimony to date, that as of the time the telex was sent
6 on April 28th no one had raised, in the sense of bringing
7 to your attention, that there might be any question about
8 the scope of Universal's rights in King Kong?

9 A. To the best of my recollection, no.

10 Q. I take it that if we go from April 28th to May
11 6th, when you sat down with the representatives of Coleco
12 and Nintendo, that no one had raised the question of
13 Universal's rights in King Kong to you?

14 A. I think we talked this morning about a meeting
15 which I had with Mr. Kroft prior to the arrival of the
16 Coleco and the Nintendo people and I think I said to you
17 that there was some point at which Mr. Kroft and I had a
18 conversation about this issue of the copyright on the book
19 being in the public domain and I believe I also testified
20 that I couldn't exactly pinpoint whether that conversation
21 may have occurred when Mr. Kroft was in my office before
22 they arrived or whether it occurred at some other point in
23 that period.

24 I think as you yourself have indicated, there
25 were a lot of different things going on at the time and

1 it's hard for me to pinpoint exactly when that occurred.

2 Q. Well, when that occurred, Mr. Hadl, was the
3 subject the public domain status of the book King Kong?

4 A. Yes.

5 Q. Nothing else?

6 A. When you say nothing else --

7 Q. Nothing else that related--

8 A -- that related to our rights in King Kong?

9 Q. Right.

10 A. Yes, to the best of my recollection, no, nothing
11 else.

12 Q. Who raised the issue, who brought it into the
13 conversation?

14 A. I don't remember.

15 Q. Well--

16 A I can give you an assumption but you don't want
17 that.

18 Q. I don't want your assumption.

19 A. Thank you.

20 Q. Let's work towards getting to something you
21 recollect. At the time the subject came up, had you read
22 the Cooper judgment?

23 A. I think I have testified before that the first
24 materials I received were a fairly big package which Mr.
25 Kroft sent me and to the best of my recollection that was

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1 around the middle of May. No, I had not on May 6th, read
2 the Cooper judgment.

3 Q. I'm sorry. If I have confused you, Mr. Hadl, I
4 apologize.

5 I am asking you about the conversation you had
6 with Mr. Kroft about the public domain status of the book
7 King Kong.

8 Now, I believe your testimony to be that you
9 can't tell me when that conversation took place other than
10 that it took place sometime prior to the filing of the
11 complaint in this action; is that correct?

12 A. I'm trying to think whether I can fix it at any
13 earlier point than that.

14 This action was filed at the end of June.

15 Q. June 29th?

16 A. I think it took place sometime in the month of
17 May. My difficulty is pinpointing whether it occurred
18 before that meeting with Coleco and Nintendo people or
19 subsequently. I know that I -- my best recollection is
20 that I received that package of materials subsequent to the
21 meeting.

22 Q. And it is your best recollection that that
23 conversation took place prior to the time you received the
24 stack of materials; is that correct?

25 A. Yes.

A2543

1 Q. So you're confident in saying that you hadn't
2 read the Cooper judgment?

3 A. At the time of the meeting, correct.

4 Q. At the time of the conversation with Mr. Kroft
5 about the public domain status?

6 A. That's correct.

7 Q. And you hadn't read the Universal judgment?

8 A. That's correct.

9 Q. And you hadn't read the findings of fact and
10 conclusions of law that accompanied both?

11 A. Yes.

12 Q. You have already testified that you didn't know
13 about the transcript that contained Mr. Kroft's statement
14 to the federal court there; that's correct too?

15 A. I knew there was a case. I hadn't read the
16 transcript.

17 Q. And you didn't know what Mr. Kroft said?

18 A. No, I did not know what Mr. Kroft said.

19 Q. So, with that in mind, do you believe that Mr.
20 Kroft brought up the subject of the public domain status of
21 the book King Kong or you did in that conversation with him?

22 A. To the best of my recollection, he did.

23 Q. Did Mr. Kroft tell you that Judge Real had found
24 that the book was in the public domain?

25 A. I think we went over this or I testified to this

1 before. I guess we can review it.

2 I think there were two issues. Issue one was
3 that there had been a finding but that the case had been
4 settled and the judgment had been vacated, including the
5 findings.

6 Point two was that even though the underlying
7 original King Kong book, whether it was or was not in the
8 public domain -- I further recollect that there was a
9 question about whether that finding was really correct,
10 assuming it still was a finding because it had been vacated.

11 The next point was that even if it were that
12 didn't necessarily mean that the picture, the '34 picture
13 or the other picture, were in the public domain. Based on
14 what Mr. Kroft told me, he still felt that we had a valid
15 claim.

16 Q. Okay. Now, you say that Mr. Kroft said that
17 that indeed was in the judgment of the court when it was
18 issued, that there was a question as to whether or not that
19 finding was correct, that there was a further question as
20 to whether or not it was still in effect and, finally,
21 there was the issue of whether or not that finding, if it
22 were still in effect, had anything to do with Universal's
23 rights; is that correct?

24 A. That's correct.

25 Q. That's the substance of what you and Mr. Kroft

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1 discussed?

2 A. To the best of my recollection.

3 Q. In having that conversation, did Mr. Kroft tell
4 you that in that litigation it was Universal's position,
5 argument and evidence that the book was in the public
6 domain and that that when Judge Real made that
7 determination he was doing so because that's what Universal
8 asked him to do; did he tell you that?

9 A. I don't know that he told me exactly the way you
10 characterized it. I think he did say to me we argued that
11 the book was in the public domain.

12 Q. Okay. But he went on to say even though we made
13 that argument, that finding, that determination may have
14 been incorrect?

15 A. That's correct and I believe he also said he
16 didn't think it precluded us from taking the position we
17 were taking in this matter.

18 Q. Okay. I'm trying to take them one at a time.
19 Mr. Kroft said that what we asked Judge Real to do and what
20 Judge Real did may have been incorrect?

21 A. That's correct.

22 Q. Okay. And did Mr. Kroft tell you in that
23 conversation that the original judgment in which that
24 determination was made had been vacated?

25 A. I think I just said that.

A2546

1 Q. He told you it had been vacated?

2 A. Yes, -- be careful here. I think there was a
3 settlement and I don't exactly know whether it was vacated,
4 whether it was vacated as a result of an order of the Ninth
5 Circuit or Judge Real did it. I don't know the exact
6 technicalities, but the judgment was vacated.

7 Q. That's what Mr. Kroft told you, because you
8 didn't know anything about the litigation other than what
9 Mr. Kroft told you?

10 A. That's correct.

11 Q. Did Mr. Kroft also tell you that the judgment in
12 which that was contained, the Cooper judgment, had been
13 reinstated in January of 1981, approximately, 15 or 16
14 months prior to your conversation with him?

15 A. I don't recall that.

16 Q. Do you know whether or not Mr. Kroft even knew
17 that the judgment had been reinstated?

18 A. I can't answer that.

19 Q. Did Mr. Kroft tell you, in words or substance,
20 that there isn't any issue as to whether or not the book is
21 in the public domain because in the reinstated judgment at
22 paragraph 10, in January of 1981, Judge Real said that this
23 judgment shall not affect the finding that the
24 serialization and novel King Kong are not public domain;
25 did Mr. Kroft tell you that?

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1 A. Not that I recall.

2 Q. Okay.

3 A. I have told you what Mr. Kroft told me and
4 that's the basis for which I form my belief.

5 Q. I understand.

6 Did there come a time prior to the questions
7 that I am now putting to you, Mr. Hadl, that you found out,
8 by review of the documents or otherwise, that the Cooper
9 judgment was reinstated?

10 A. Well, I'm having some trouble in responding to
11 that because to the best of my knowledge sitting right here
12 today I still have the opinion that I gave to you just
13 before as to the validity of the finding that the book was
14 in the public domain.

15 Q. Okay. As I understand your response, sitting
16 here today you don't know whether or not the judgment was
17 reinstated?

18 A. The judgment embodying that finding?

19 Q. Yes. You don't know and I take it from your
20 answer that Mr. Kroft never brought that to your attention,
21 assuming it's a fact, he never brought that to your
22 attention?

23 A. Well, he might have brought that to my attention
24 but it would have been as part of the discussion we had --
25 and again I don't know all of the legal -- all of the

1 technicalities of the reinstatement, if that's correct, of
2 that judgment. But his position with me was still the
3 position which you and I have gone over.

4 I think it might be useful to add, because I
5 just happened to note this yesterday in the newspaper, that
6 Disney is suing somebody over Pinnochio and the person is
7 claiming that Pinnochio is in the public domain. It's not
8 that the book Pinnochio is in the public domain. It's not
9 in our business the beginning and end of something if an
10 underlying work or aspect of a property is in the public
11 domain.

12 Q. Thank you for that interesting observation.

13 Now, Mr. Hadl, did Universal claim rights
14 arising from the Cooper judgment?

15 MR. FAIRHURST: I have to object to the form,
16 your Honor, because I am not certain what the context is,
17 brought a claim against what, this case or some other case?

18 MR. KIRBY: I am talking about rights in King
19 Kong arising from the Cooper judgment.

20 THE COURT: Overruled.

21 A. Well, it would help me, Mr. Kirby, if you told
22 me what period of time you are talking about. You are
23 asking did we do something.

24 Q. What about in June of 1982, did Universal claim
25 that it had rights in King Kong arising from the Cooper

1 judgment?

2 A. I think the only answer I can give to you on
3 that is that when it came time to file the action we
4 retained Mr. Fairhurst. Mr. Kroft had been working on the
5 matter up to that time. We then retained Mr. Fairhurst.
6 He was sent all the documents and I believe he also had a
7 copy of Mr. Kroft's draft complaint and he reviewed that --

8 MR. FAIRHURST: Be careful at this point. I
9 don't want to begin waiving an attorney-client privilege
10 when I don't have a chance to pop in here, your Honor.

11 A. I was going to terminate and say he filed the
12 complaint on our behalf.

13 Q. Mr. Hadl, I believe you testified this morning
14 that you had already decided to file suit by May 21st; is
15 that correct?

16 A. Well, if that's the day we had the luncheon with
17 Mr. Arakawa and Mr. Lincoln and they left telling us they
18 would not reach an agreement with us, the answer is yes.

19 Q. Let's just take that as a nice convenient date,
20 the date you, Universal, decided to file suit. On that
21 date --

22 MR. FAIRHURST: I'm sorry. I have lost this now,
23 your Honor. Objection to the form. I don't know what date
24 he's talking about.

25 MR. KIRBY: May 21st, 1982.

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1 Q. You know what date I'm talking about, don't you?

2 A. I do. I don't know what the question is.

3 Q. I have not asked it yet. Your counsel has
4 intervened.

5 It's May 21, 1982.

6 MR. FAIRHURST: May 21, 1982. If we are going
7 to work off of a date for the second luncheon, why don't we
8 get the right date?

9 MR. KIRBY: Okay.

10 Q. I believe that the testimony on the record, as
11 represented on this chart, is that on May 21st Mr.
12 Sheinberg and you, Mr. Hadl, met with Mr. Lincoln and Mr.
13 Arakawa in the fancy private dining room at Universal City
14 Studios lot and Mr. Sheinberg told Nintendo that Universal
15 litigation department turned a profit and start saving
16 money or attorneys' fees. That's the date I'm talking
17 about.

18 MR. FAIRHURST: I move to strike that question
19 because it is not a question. It's a long statement by Mr.
20 Kirby.

21 THE COURT: It's true. The question has not yet
22 been posed.

23 Q. On May 21st you have testified that you made the
24 determination, Universal made the determination to file
25 suit against Nintendo.

A2550

1 Now, my question to you is: On May 21st, 1982,
2 did Universal claim rights in King Kong arising from the
3 Cooper judgment?

4 A. You're asking me a question I can't answer.

5 Q. Because you don't know?

6 A. Because on May 21st, that's right, I don't know.

7 Q. On May 21, 1982, did you know of any other
8 judgment or agreement or document on the basis of which
9 Universal is claiming rights in King Kong?

10 A. Yes, I did.

11 Q. And what was that?

12 A. In the telex of April 28 it said that our rights
13 were based on an assignment from Mr. Cooper. If you show
14 me the telex I could find it now. I believe that was in
15 there.

16 Q. Had you read the agreement between Universal and
17 Major Cooper when the telex was sent?

18 A. No, I had not.

19 Q. Had you read it on May 21st?

20 A. No, I had not.

21 Q. Now, Mr. Hadl, we have you and Mr. Sheinberg
22 discussing what to do about Coleco after the luncheon
23 meeting.

24 When was the next conversation you had with Mr.
25 Sheinberg on the subject of King Kong/Donkey Kong?

1 A. You mean other than Universal?

2 Q. Other than Universal.

3 A. No.

4 Q. Did you know that RKO claimed rights in King
5 Kong, on May 6? I know subsequently you have learned a
6 great deal, Mr. Hadl. I am asking about May 6.

7 A. Sometimes it's difficult to separate that all
8 out.

9 Q. I am sure.

10 A. When you said rights I thought you were talking
11 about in this last question you asked me what we have been
12 talking about here, what we call merchandising rights.

13 Q. No. I'm talking about rights in King Kong?

14 A. You meant rights across the board?

15 Q. Right. On May 6 I asked you do you know what
16 entities claimed rights in King Kong.

17 A. It's hard for me to exactly reflect on what I
18 knew. I would think the answer to that was yes. I knew
19 there was a motion picture that RKO had made and I knew
20 there was a 1976 picture -- the 1976 picture I had seen. I
21 hadn't seen the '34 one. Yes. I knew they had rights in
22 those pictures.

23 Q. You knew RKO and the makers of the '76 picture
24 claimed rights in King Kong?

25 A. I would have been aware -- I didn't know, for

1 example, whether the '34 copyright was still valid. I
2 would have assumed it was and that the copyright on the
3 picture, the '76 picture was still good.

4 Q. Did you know about what rights Major Cooper
5 claimed on May 6, 1982?

6 A. I think the answer to that is no. I shouldn't
7 say I think. The answer to that is no.

8 Q. Prior to the meeting on May 6, had you discussed
9 that question with Mr. Kroft?

10 A. Which question?

11 Q. What rights others claimed in King Kong, prior
12 to May 6.

13 A. No. I was operating again on the advice of Mr.
14 Kroft that we had the rights to bring this action.

15 Q. And Mr. Kroft didn't raise the subject of RKO or
16 DDL or Paramount or Major Cooper with you?

17 A. I think what we have discussed is that we had a
18 conversation about the public domain aspects of the book
19 and you have now asked me about the pictures and I -- what
20 I have answered is yes I believe I understood, had to
21 understand, that there were two pictures and that those
22 pictures were protectable.

23 Q. Is it your testimony now that on May 6 you knew
24 that?

25 A. I would qualify it this way: I wouldn't have

1 been certain who owned the rights that flowed from that.
2 But I was aware that there were two pictures, that we had
3 rights, Mr. Kroft advised me we had rights, that we had
4 sent a telex on April 28th which said that our rights
5 flowed from an assignment from Mr. Cooper and I was aware
6 that there were two pictures which I believed were still
7 protected and were not in the public domain.

8 Q. My question to you, again, Mr. Hadl, is: With
9 that knowledge, did you discuss the rights that DDL,
10 Paramount and Major Cooper had in King Kong with Mr. Kroft
11 prior to the meeting on May 6th?

12 A. No.

13 Q. All right.

14 A. The answer is that I got that big stack of
15 documents and that I recollect was sometime later on.

16 Q. You were testifying, Mr. Hadl, that you talked
17 to Mr. Sheinberg about what happened at the meeting on May
18 6th. You recall that?

19 A. Yes.

20 Q. And you testified, as far as you recall, the
21 question of rights in King Kong was not brought up by you?

22 A. I said, to the best of my recollection, it was
23 not discussed.

24 Q. He didn't bring it up, you didn't bring it up.
25 Now, after your report on the May 6th meeting,

1 when was the next time you spoke to Mr. Sheinberg on the
2 subject that we are discussing here today?

3 A. I can't say for certain. I can only speculate.

4 Q. What's your best educated guess. I am not
5 interested in you just pulling something out of the air.
6 You know certain things. You know you had a meeting to
7 which you invited Mr. Sheinberg on May 21. We have a
8 conversation now on May 6th.

9 So if it will help you, let me ask you this:
10 Prior to telling Mr. Sheinberg and Mr. Arakawa and Mr.
11 Lincoln were coming to town and you had invited them to
12 have lunch, did you have any conversation with him at all
13 between your report on the May 6th meeting and making the
14 scheduling arrangements for the May 21st meeting?

15 A. Mr. Kirby, I think I would be speculating and I
16 don't think you want me to do that.

17 Q. Your answer is that you don't recall any
18 conversation?

19 A. That's right, I don't recall any specific
20 conversation.

21 Q. When you called Mr. Sheinberg to arrange his
22 attendance at the May 21st meeting, what did you say to him
23 and what did he say to you?

24 A. I told him that Mr. Lincoln and Mr. Arakawa were
25 coming to Los Angeles, that they wanted to have lunch with

1 us and I requested them to attend.

2 I told him that -- I guess I'm speculating again.
3 My best recollection is I told him I thought they were
4 coming to Los Angeles for the purpose of working out an
5 agreement with us.

6 Q. Did you have any further discussion?

7 A. With Mr. Sheinberg?

8 Q. Yes.

9 A. Not that I recall.

10 Q. Did you alert Mr. Sheinberg in that conversation
11 that questions had been raised about Universal's rights in
12 King Kong?

13 A. Not that I recall.

14 Q. You had your luncheon meeting and I assume that
15 after that meeting you and Mr. Sheinberg found the occasion
16 to exchange a few words about the meeting?

17 A. I'm certain we walked right back to our offices
18 together, so I would assume we did.

19 Q. Do you recall talking to him about what had
20 transpired at this meeting?

21 A. I recall that both of us were surprised that
22 both Mr. Arakawa and Mr. Lincoln had come all the way from
23 Seattle to Los Angeles and sat through a two hour lunch for
24 the purpose of saying thank you very much. We are not
25 interested in any arrangement. I felt Mr. Lincoln could

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1 have easily handled that in a five minute telephone call,
2 two minute telephone call.

3 Q. Did you and Mr. Sheinberg discuss anything else?

4 A. I think it would have been a mutual decision,
5 we'll file the complaint.

6 Q. Did Mr. Sheinberg direct you to file the
7 complaint?

8 A. You can say that. I think that would have been
9 my recommendation as well.

10 Q. And that took place as you were walking back to
11 your offices?

12 A. Correct.

13 Q. Once you returned to your office on May 21st,
14 did you have any further discussion whatsoever on these
15 subjects with Mr. Sheinberg before filing the complaint on
16 June 29th?

17 A. I don't recall.

18 Q. So it's fair to say that at the time Universal
19 filed this complaint that to the best of your knowledge you
20 had never alerted Mr. Sheinberg to the fact that questions
21 had been raised about Universal's rights in King Kong?

22 A. That's correct.

23 Q. Now, you have told us, Mr. Hadl, that you had a
24 conversation with Mr. Sheinberg about Tiger sometime, in
25 your best judgment, best recollection, before May 6th and

1 Q. So when you found out about the Tiger license
2 you also found out that steps had been taken to terminate
3 it; is that correct?

4 A. That's correct although you're -- yes.

5 Q. Was it kind of simultaneously?

6 A. To the best of my recollection, Mr. Adler or
7 Miss Sifuentes came to me and said we have discovered we
8 have this license and we are taking steps to terminate it
9 at the same time.

10 Q. And that was your first knowledge about the
11 Tiger license?

12 A. That's correct.

13 Q. Now, Mr. Hadl, this morning you testified that
14 Mr. Adler had incurred the wrath of Mr. Sheinberg by first
15 advising him that there were no King Kong licenses
16 outstanding in the electronic game area and then being
17 forced to admit that there was a license; do you remember
18 that testimony?

19 A. Yes, I do.

20 Q. How did you find out that Mr. Adler had so
21 incurred Mr. Sheinberg's wrath?

22 A. I think I have testified that I advised Mr.
23 Sheinberg about the Tiger matter and when I advised Mr.
24 Sheinberg about the Tiger matter Mr. Sheinberg advised me
25 that he was very surprised and very shocked because Mr.

Adler had advised him that there were no -- just as I have indicated -- that there were no King Kong home video licenses outstanding.

Q. I see. Did Mr. Sheinberg tell you when he had had that conversation with Mr. Adler?

A. To the best of my recollection, Mr. Sheinberg had that conversation with Mr. Adler after the luncheon with Mr. Greenberg on the 27th.

Q. Did Mr. Sheinberg tell you prior to the time you called him and told him that there was a license still in effect that he had had that conversation with Mr. Adler?

A. No, I don't recall that.

Q. So is it fair to say that based on what Mr. Sheinberg told you that Mr. Sheinberg had been investigating the status of the use of the King Kong property during the period April 27th and the time you had a conversation with him about Plaintiff's Exhibit 15?

A. Mr. Kirby, I don't think that's correct at all. I think what I recall is that when I advised Mr. Sheinberg about this matter Mr. Sheinberg became upset, as I was upset. He became upset for two reasons. One, that such an agreement existed and, number two, that Mr. Sheinberg and not I, Mr. Sheinberg advised me that he had asked Mr. Adler not about -- not the way you describe it. He had said to Mr. Adler have you given anybody else home video rights in

1 King Kong and Mr. Adler had said no and that was after the
2 Greenberg lunch which Mr. Sheinberg advised me about when I
3 went to him with the Tiger situation.

4 Q. Okay. And when you had this particular
5 conversation with Mr. Sheinberg, did he say we have to do
6 something about the Tiger license because we want to agree
7 with Coleco, in words or in substance?

8 A. It's hard for me to pinpoint exactly when the
9 conversation occurred or when a conversation occurred. But
10 it wasn't a question that we had to do something about the
11 Tiger license because of Coleco. The understanding with
12 Coleco was that we were giving them a covenant not to sue,
13 which was not in our judgment, a license. Now, you and I
14 have gone through this in my deposition about whether or
15 not we can characterize the Coleco agreement as a covenant
16 not to sue or a license. Putting that aside for a moment,
17 it was not viewed by us at that time as legally
18 inconsistent to have a legal license with someone and a
19 covenant not to sue somebody else.

20 Q. So your testimony is that you and Mr. Sheinberg,
21 when you alerted him about the existence of the exclusive
22 license with Tiger, didn't discuss whether that had any
23 impact on your arrangement with Coleco; is that your
24 testimony?

25 A. No. I didn't say that.

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1 Q. Okay.

2 A. That's not even a fair inference. We did
3 discuss, to the best of my recollection, the question of
4 the impact of this, of the Tiger situation, on Coleco and I
5 think I have just responded in giving you what we concluded
6 as a legal matter.

7 Q. You and Mr. Sheinberg had that legal discussion
8 and reached the conclusion you have described, right?

9 A. That's correct.

10 Q. About Coleco?

11 A. That's correct.

12 Q. Did you have in that discussion any further
13 words on the subject of whether having the Tiger license
14 was a good thing or bad thing for Universal?

15 A. Good thing or bad thing, no.

16 Q. Commercially useful.

17 A. I am having trouble with commercially useful.
18 You mean I was going to return money?

19 Q. Yes, for starters.

20 A. I think, as I have indicated in a subsequent
21 meeting I had with Miss Sifuentes, the concern I had about
22 it was it was an agreement in which I thought a valuable
23 property had been licensed for a relatively small amount of
24 money.

25 Q. And that conversation was sometime in the sort

1 of May, 4, 5, 6 area?

2 A. With Miss Sifuentes?

3 Q. Yes.

4 MR. FAIRHURST: Objection to the form.

5 THE COURT: Overruled.

6 A. Let me ask you, Mr. Hadl: Do you know when that
7 conversation with Miss Sifuentes was, that's the meeting
8 where you got really angry with her, right?

9 A. I am not certain whether it was May 4, 5 or 6 or
10 maybe whether it was in the following week.

11 Q. Now, you said that you told her that King Kong
12 was a valuable property; is that correct?

13 A. That's correct.

14 Q. Did you tell her on what basis you had formed
15 the opinion that King Kong was a valuable property of
16 Universal's?

17 A. The basis I had formed the opinion was the
18 advice of Mr. Kroft. Did I tell her that? To the best of
19 my recollection, I don't recall.

20 Q. Let's be sure that we both understand what's
21 being said, Mr. Hadl.

22 Mr. Kroft told you that King Kong was a valuable
23 property?

24 A. I'm sorry. All right.

25 Q. That King Kong was a valuable property of

1 Universal's, you didn't mean that, did you?

2 A. No. Let's go back.

3 Q. On what basis did you form your opinion,
4 expressed to Miss Sifuentes, that King Kong was a valuable
5 property of Universal's?

6 A. I would have to say that that's just my own
7 personal judgment as I would say to you that ET or Jaws is
8 a valuable property of Universal. In the business we are
9 in, those are the assets of the company. Those are the
10 crown jewels if you will. Those are the things that we
11 have to protect. That's the property which we license and
12 which we own and which we -- and by which we earn income.

13 Q. Okay. Thanks, Mr. Hadl. I appreciate the
14 education.

15 Now, you, at the time you expressed that opinion
16 to Miss Sifuentes, didn't have a clue to what royalty
17 agreements Merchandising Corporation of America had entered
18 into with respect to any Universal properties, did you, May
19 of 1932?

20 A. Are you talking about King Kong or any
21 properties?

22 Q. I am talking about any properties?

23 A. A clue?

24 Q. A clue.

25 A. I'm sorry. I would have to have the question.

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1 A. That is correct.

2 Q. After May 12, indeed after May 8, there came a
3 time when you heard back from Tiger, is that correct?

4 A. That is correct.

5 Q. And that was the series of three letters?

6 A. That is correct.

7 Q. That you got all at or about the same time?

8 A. That is correct.

9 Q. And in those letters, which are all in evidence,
10 Mr. Hadl, in one of those letters Tiger's attorneys said --
11 and this is in Plaintiff's Exhibit 21 A -- that they were
12 perplexed with Universal's, MCA's claim of right in the
13 ownership and control of the title King Kong in the United
14 States.

15 Do you recall that?

16 A. Yes, I do.

17 Q. Did you ever respond to this letter in writing?

18 A. The answer to that is yes. I believe that at my
19 deposition I wasn't clear about it, but I have since -- my
20 recollection has since been refreshed.

21 Q. And your recollection now is that you did
22 respond?

23 A. Yes, I did.

24 Q. Is that response what is in evidence as
25 Plaintiff's Exhibit 22?

1 A. That is correct.

2 Q. And in that letter did you say anything at all
3 on the subject of MCA's rights in King Kong?

4 A. No. You just ignored that part of the letter
5 that was sent to you?

6 A. That is correct.

7 Q. Did you call Mr. Kroft upon receipt of the May
8 18 series of letters, including 21 A, where the question
9 about Universal's rights was raised?

10 A. To the best of my recollection, no.

11 Q. I'm sorry?

12 A. To the best of my recollection, no.

13 Q. Did you talk with anyone about the question
14 raised in that letter?

15 A. Which question?

16 Q. That question, the question of Universal's rights?

17 A. In King Kong?

18 Q. Yes.

19 A. To the best of my recollection, no.

20 Q. And I take it that answer and your previous
21 answer also encompass Joe DiMuro. You didn't talk to him
22 about that?

23 A. I'm looking at the letter again trying to see
24 whether there is anything in it which would refresh my
25 recollection that I might have consulted somebody else on

1 it. I think the answer -- again, the answer is no.

2 Q. Okay. And the date of your letter in response
3 to the Tiger attorneys is May 20, 1992, is that correct?

4 A. That is correct.

5 Q. That day is the day before the lunch with Mr.
6 Sheinberg, Arakawa and Lincoln, is that correct?

7 A. That is correct.

8 Q. You didn't have a meeting, a prelunch meeting on
9 May 21, with the Tiger representatives, did you?

10 A. Pardon me?

11 Q. On May 21 --

12 A. A prelunch meeting with the Tiger
13 representatives?

14 Q. With the Tiger representatives. Did anyone from
15 Tiger come to Universal City Studios and meet with you on
16 May 21?

17 A. Before I had the lunch with Mr. Steinberg and
18 Mr. Arakawa and Mr. Lincoln, the Nintendo lunch.

19 Q. Yes?

20 A. To the best of my recollection the meeting that
21 occurred with Mr. Rissman and Mr. Kaplan, the Tiger people,
22 came subsequent to that time after Mr. Rissman had gone to
23 Japan-- pardon me, I think it was Hong Kong -- to have the
24 game redesigned, and when he brought the demonstration
25 product back, which we looked at at the Sears Roebuck store.

1 I don't recall a meeting with the Tiger people before May
2 21.

3 Q. I wouldn't have thought so, either, but I wanted
4 to ask you to make sure there wasn't a meeting on May 21
5 with the Tiger people.

6 A. Not to my recollection.

7 Q. Indeed, you didn't have a meeting with them
8 until sometime after that when Mr. Rissman came back from
9 Hong Kong?

10 A. That is correct.

11 Q. Okay. And your letter of May 20, 1982,
12 expressly reaffirms the position taken in your telex dated
13 May 7 that the contract between the parties has been
14 terminated because of a material breach thereof by your
15 client. Is that correct?

16 A. That is correct.

17 Q. So it is fair to assume, isn't it, Mr. Hadl,
18 that on May 21, insofar as Universal was concerned, the
19 Tiger agreement was still terminated?

20 A. Well, that is correct, but there is also a
21 following paragraph.

22 Q. You say you are willing to talk about settlement?

23 A. That is correct.

24 Q. But on May 21 they were terminated?

25 A. May 21 or May 20?

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1 Q. May 21. You sent a letter May 20. May 21, the
2 next day they still were terminated, right?

3 A. To the best of my recollection, yes.

4 Q. And to the best of your recollection they
5 remained terminated until you had your meeting with Mr.
6 Rinsaan, right?

7 A. Well, it was a termination on our part. They
8 didn't accept the termination.

9 Q. I understand.

10 A. Okay.

11 Q. I understand. But Universal considered the
12 contract terminated?

13 A. That is correct.

14 Q. Mr. Hadl, I want you to think very carefully
15 about this.

16 prior to the meeting, the luncheon meeting on
17 May 21, did you and Mr. Sheinberg have any discussion about
18 Tiger?

19 A. I don't recall.

20 Q. Did you have any discussion with Mr. Kroft about
21 Tiger?

22 A. On that specific day?

23 Q. On that specific day, May 21.

24 A. You can refresh my memory, but at this moment I
25 don't recall.

1 while I might have felt that we could do that and enter
2 into a covenant not to sue with Coleco, if we nevertheless
3 got into litigation over that question that was a less
4 desirable result than a result in which I worked out
5 agreement or arrangement with Mr. Kaplan so that his client
6 was able to market his product and we were able to also
7 work out the arrangement with Coleco and both parties went
8 away happy.

9 Q. You had a good faith basis for your termination
10 telex to Tiger, didn't you?

11 A. Yes, I did.

12 Q. And when you sent it you also considered the
13 license a lousy license, right?

14 A. Yes, I did.

15 Q. But by May 20 you changed your mind?

16 A. No, I hadn't changed my mind. I still
17 considered it -- I considered it a bad arrangement in light
18 of the arrangement that was then pending with Coleco.

19 Q. Then I misunderstood you. I thought you said
20 forgetting Coleco, forgetting anything else, it was a
21 misuse of your valuable property to let it go for that
22 small amount of money?

23 A. On an exclusive basis.

24 Q. Okay.

25 A. Yes, on an exclusive basis for sure.

1 Q. By the way, there isn't any doubt in your mind,
2 is there, that between at least May 8 and May 20 Universal
3 had in its view terminated Tiger?

4 A. You have asked me that a couple of times, and I
5 think you pointed out that in the first telex we didn't
6 tell them they were terminated.

7 Q. That was the second telex. The first telex was
8 May 4. At the time you sent the termination telex, at
9 least until you began having some second thoughts expressed
10 in your May 20 letter, Tiger was terminated, right?

11 A. Yes. I said that we terminated them. By their
12 letters of the 18th they didn't regard themselves as
13 terminated.

14 Q. Did you inform Mr. Mittelman that you were going
15 to terminate Tiger?

16 A. Not to my recollection.

17 Q. Did you inform him that you had terminated Tiger?

18 A. Not to my recollection.

19 Q. Did you inform MCA's accounting department that
20 you had terminated Tiger?

21 A. Which accounting department, the Merchandising?

22 Q. Merchandising or MCA's or any accounting?

23 A. No.

24 Q. Did you circulate a memorandum within
25 merchandising or MCA stating that the license with Tiger

1 had been terminated?

2 A. No.

3 Q. On May 21, you had no idea what, if anything,
4 Tiger would do with its game, did you?

5 A. I would have to see the letters of May 18.
6 Again, I thought one of them suggested to me that we try to
7 settle the problem.

8 Q. Let me be more specific then, Mr. Hadl.

9 On May 21, you hadn't seen any revised Tiger art
10 work, packaging, or new game, had you?

11 A. That is correct.

12 Q. So on May 21 you, and indeed Mr. Sheinberg,
13 didn't know whether or not Tiger would come back with
14 something that Universal found acceptable?

15 A. That is correct.

16 Q. Mr. Hadl, how many times did you see Donkey Kong
17 being played, and let me put a time frame on that. I
18 apologize for that.

19 Prior to June first, 1982, how many times did
20 you see Donkey Kong being played?

21 A. I think that other than the time I went to the
22 arcade with my children on none. Not I think. That's my
23 testimony.

24 Q. That was the only --

25 A. My testimony is that apart from the time I went

1 to the arcade with my children, none.

2 Q. Did you know prior to June 6, 1982, how many
3 game boards there were on the Donkey Kong game manufactured
4 by Nintendo?

5 A. To the best of my recollection, I had in my mind
6 that there were 50 -- I have a number in my head of 50 to
7 60 thousand.

8 Q. I am sorry, I think you misunderstood my
9 question. I wasn't asking how many Donkey Kong games like
10 that that Nintendo had sold. I was asking -- do you know
11 what a game board is?

12 A. I must be mistaken. I thought you were
13 referring to the arcade game.

14 Q. I am. I am speaking about the arcade game. I
15 am not asking how many were sold, though. That is not what
16 I am asking.

17 Do you know what a game board is on a arcade
18 game?

19 A. If you mean -- the answer is -- I can tell you
20 what I think it means.

21 Q. Tell me what you think it means?

22 A. I think it means after you put in your money and
23 the thing is lit up it is the game board that appears.

24 Q. Okay.

25 Now, how many game boards are there in the

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1 Donkey Kong video arcade game?

2 A. There are --

3 Q. As of your knowledge, I am asking you now your
4 knowledge as of June 6, 1982?

5 A. My knowledge as of June 6 is that there was more
6 than one.

7 Q. You did you know how many?

8 A. Before June 6?

9 Q. Yes.

10 A. I, to the best of my knowledge, and based upon
11 the play at the arcade with my children, at least four or
12 five. Probably more.

13 Q. And did you and your children manage to achieve
14 the level of success that moved you from the first game
15 board to the second game board?

16 A. I did not. They did.

17 Q. And you observed the second game board?

18 A. Yes, I did.

19 Q. Would you describe the second game board?

20 A. At this point in time, I cannot.

21 Q. Did the second game board have ramps on it?

22 A. I just said I can't describe it, so I can't tell
23 you that.

24 Q. I'm trying to refresh your recollection, Mr.

25 Had1?

1 A. I see.

2 Q. Did the second game board have horizontal ramps
3 on it?

4 A. I don't remember.

5 Q. Do you remember the action of the game play on
6 the second board?

7 A. On the second board?

8 Q. Yes.

9 A. No.

10 Q. Did you know it on June 6, 1982?

11 A. (No response)

12 Q. Did you remember what it was on June 6, 1982?

13 A. I don't recall.

14 Q. You do remember that you met with the Tiger
15 representatives and went hustling off to Sears Roebuck
16 sometime before the Consumers Electronic show, which I
17 believe was held beginning on June 6, 1982. Is that
18 correct?

19 A. That is correct.

20 Q. Mr. Rissman was not from Hong Kong with his
21 revised game, you went out and you put it in a Sears
22 Roebuck --

23 A. That is correct.

24 Q. And you played it?

25 A. That is correct.

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1 Q. And that was a home video cartridge, right?
2 A. That is correct.

3 Q. Who played it, by the way?
4 A. Mr. Rissman.

5 Q. How many game boards did the Tiger King Kong
6 game have?

7 A. To the best of my recollection I only saw one.

8 Q. Can you describe that game board?

9 A. Which, the revised one?

10 Q. The one you saw. That's the only one you ever
11 saw actually, isn't it?

12 A. That is correct.

13 Q. Okay. That's the one I am asking about.

14 Describe that.

15 A. The crutes were gone, the game was now a
16 horizontal and vertical one rather than a diagonal one.
17 What continues to stick in my head is something about the
18 way the individual -- when they jump over something was
19 modified which made it different from the Donkey Kong game.
20 I am not certain, but to the best of my recollection there
21 was some change with regard to the barrels or what was
22 being sent down, what was being sent down from the top.

23 Q. In the Tiger game, did the player, did the man
24 that the player can control, jump over gaps in the board?

25 A. I can't give you the -- to the best of my

1 recollection I can't remember right now whether that is in
2 the one game or the other game, or whether it is in both,
3 whether he jumps over gaps in both or whether that was the
4 critical distinction, or whether there was some other
5 distinction about jumping over things.

6 Q. Did he jump over obstacles in the game you saw?

7 A. I don't recall.

8 Q. Did he attempt to get to the top in the game you
9 saw?

10 A. Yes, he attempted to get to the top.

11 Q. Did you have a Donkey Kong arcade game there
12 with you in Sears Roebuck when you were looking at the
13 Tiger game?

14 A. No. I said to you just a --

15 Q. You only saw it once?

16 A. I told you a little while ago I only saw it once.

17 Q. Who formed the conclusion at Universal that the
18 Tiger game was no longer substantially similar to the
19 Donkey Kong game?

20 A. I formed the conclusion, but based on some
21 additional conversations, particularly with Mr. Schwefel,
22 who had the license on the home video version of Donkey
23 Kong.

24 Q. So is it your testimony that Universal based its
25 decision to reinstate Tiger and its conclusion that the

1 game was not substantially similar based on your
2 observations at Sears Roebuck, and your telephone
3 conversations with Mr. Schwefel?

4 A. That is correct.

5 Q. You testified this morning, didn't you, that Mr.
6 Schwefel said that the Tiger game was a bad game and that
7 he didn't want to have any changes made because it might
8 get better. Do you recall testifying to that effect this
9 morning?

10 A. I don't recall testifying -- I recall the first
11 part of that. I'm not so sure I recall the second part
12 that he didn't want changes made because it might get
13 better.

14 My recollection is that what I testified to is
15 that he didn't believe the Tiger game was going to be an
16 economic success, and he felt that bringing an action
17 against them might only give it publicity which would add
18 to its economic success and detract from Donkey Kong.

19 Q. Okay.

20 And that's your testimony this afternoon?

21 A. I can --

22 Q. No, I just heard it. That's your testimony this
23 afternoon?

24 A. Mr. Schwefel also advised me that he said from
25 his point of view, and I regarded him as knowledgeable the

1 industry, which he was, that there were many games which
2 had at that time which had ladders or horizontal and
3 vertical -- a kind of game in which the object was going up
4 or down horizontal or vertical ladders.

5 Q. Okay. Now, Mr. Hadl, after the May 21 meeting,
6 until the complaint was filed, you had no further
7 conversations with Mr. Sheinberg, and you have so testified
8 today, about that lawsuit?

9 A. I said I didn't recollect any.

10 Q. All right. I apologize. You didn't recollect
11 any.

12 A. That's right.

13 Q. Did you yourself do any anything further with
14 respect to that lawsuit between May 21 and the time the
15 complaint was filed on June 29?

16 A. Yes.

17 Q. What?

18 A. I was in communication with Mr. Fairhurst. .

19 Q. Anything else?

20 A. We went over this morning the matter I forgot.

21 We secured the assignment from RKO.

22 Q. And you testified that that was Mr. Kroft's idea?

23 A. That is correct.

24 Q. Did you ask Mr. Kroft why it was necessary?

25 A. Yes.

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Q. And did he respond to you that it was because RKO had some position as constructive trustee for Cooper?

A. I believe I so testified this morning.

Q. Did he give you any other reason?

A. As a matter of efficiency in terms of the pleadings of the case.

Q. When he told you that, did you ask him any other questions about rights that RKO might have in King Kong?).

A. Not that I recall.

Q. Did he tell you anything else about the rights that RKO might have in King Kong?

A. Not that I recall.

Q. You talked to Mr. Fairhurst, and you had that conversation with Mr. Kroft. Anything else prior to the filing of the lawsuit?

A. well, there was the meeting with Mr. Schwefel in Chicago.

Q. Yes. You testified about that. Anything else?

A. I can't recall, but you can refresh my recollection. There may have been some further, at that point, discussions with Tiger over working out the terms of an agreement.

Q. Did you have any further contact with Nintendo?

A. After May 21?

Q. Yes.

1 A. I don't believe so.

2 Q. Is this the press release, Defendant's Exhibit 1?

3 A. I'll have to read it.

4 (Pause)

5 A. That's the release.

6 Q. Mr. Hadl, you have testified at some length that
7 Mr. Kroft was a man widely experienced in matters relating
8 to King Kong, is that correct?

9 A. That is correct.

10 Q. At the time Mr. Fairhurst and his firm were
11 retained, had they done any work on King Kong for MCA
12 Universal, to your knowledge?

13 A. To my knowledge, no.

14 I might add that I believe Mr. Kroft looked at
15 this telex, also. I mean this press release, also.

16 Q. Okay.

17 A. I said that I think Mr. Kroft looked at this
18 press release, also.

19 Q. Did you participate in the decision to retain
20 Mr. Fairhurst and his firm?

21 A. Yes, I did.

22 Q. Did you discuss it with Mr. Kroft?

23 A. Yes, I did.

24 Q. You testified previously that you got a big
25 stack of documents relating to the RKO litigation which you

1 kind of leafed through and sent to Mr. Fairhurst, is that
2 correct?

3 A. That is correct.

4 Q. Did you send to Mr. Fairhurst any trademark
5 searches for King Kong conducted for Universal?

6 MR. FAIRHURST: Objection.

7 THE COURT: Overruled.

8 Prior to June 29.

9 MR. KIRBY: I meant to so confine my question.
10 This series of questions is about prior to June 29.

11 A. Not that I recall.

12 Q. Did you send to Mr. Fairhurst, prior to June 29,
13 1982, the memorandum that Ms. Sifuentes had sent you with
14 her collection of DiMuro memos?

15 MR. FAIRHURST: I have to interpose an
16 objection, because let's get clear what we are doing.

17 THE COURT: When did you retain Townley & Updike?

18 THE WITNESS: I can't fix the exact date. It
19 was certainly before June 29 of 1982. The retention may in
20 fact have been -- and I would say as early as when I sent
21 Mr. Fairhurst those documents and said we were going to sue
22 Nintendo.

23 THE COURT: When was that? After the --

24 THE WITNESS: After the meeting --

25 THE COURT: After you received the memo dated

1 the 12th of May? Shortly after that?

2 MR. KIRBY: I am sorry, your Honor. I am not
3 sure which memo we are talking about.

4 THE COURT: Maybe I am wrong about the date.
5 The Ms. Sifuentes memo.

6 MR. KIRBY: That is dated the 12th. You are
7 correct.

8 THE COURT: That's what you sent Fairhurst
9 together with the materials?

10 MR. KIRBY: He said he didn't.

11 MR. FAIRHURST: My difficulty here is this. The
12 lawsuit we can establish was brought on June 29. Work
13 backwards. At some point we were retained. The witness
14 doesn't know and I couldn't testify at this moment what it
15 was, either. That's my whole point. I don't want to put
16 myself in the position I have to testify in this case.

17 THE COURT: Don't worry about it. I will not be
18 prejudiced against your client if you testify in this case.

19 MR. FAIRHURST: That's very nice of you, and
20 the client appreciates that.

21 THE WITNESS: Yes, I do.

22 THE COURT: We have to establish the date at
23 which you were retained in order to establish when the
24 privilege attaches.

25 MR. FAIRHURST: That is my point.

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THE COURT: Let's stop kidding around.

Mr. Hadl, what is the best recollection you can give us as to when Townley & Updike was retained?

THE WITNESS: My best recollection is it would have been after the meeting with Mr. Lincoln and Mr. Arakawa, at which point they came back and said --

THE COURT: May 21?

THE WITNESS: Yes. At sometime after that, and before June 29.

THE COURT: All right. That is a workable date.

MR. KIRBY: Your Honor, let me suggest this. I will go on to another line and come back, but let me make --

THE COURT: I don't think you have to. All you have to do is to know at what time the Fairhurst- Hadl conversations are cloaked.

MR. KIRBY: My problem is this. The extent of the defense being raised here relating to Universal's good faith is that they relied on counsel.

Now, if that is confined to relying on Mr. Kroft --

THE COURT: It is.

MR. FAIRHURST: The other thing --

THE COURT: Let's just be clear about it. You are not -- the defense is not that they are relying on Townley & Updike, any opinion by Townley & Updike. .

MR. FAIRHURST: No. Mr. Kirby overstates it at

1 this point because that is not -- I think the statement if
2 you read it back what Mr. Kirby just said there is a
3 mischaracterization of the whole point. One of the
4 elements in our defense in the lawsuit, an element of
5 defense is that counsel relied on counsel in forming the
6 opinion or making the decision to initiate suit. That is
7 an element of it. Mr. Kirby mischaracterizes it.

8 The moment we begin to permit this witness to
9 testify, if I waive that privilege, I have a problem, and I
10 just wanted to establish the date of that. If the witness
11 doesn't know the date how can we establish it?

12 THE COURT: I am satisfied the decision was made
13 on May 21, and that you were retained thereafter.

14 MR. FAIRHURST: I have a constructive suggestion
15 from Ms. Faucher.

16 THE COURT: As always.

17 MR. FAIRHURST: As always.

18 If the witness could be put a question whether
19 we were retained before this bundle, this packet of
20 material came or after, that may help.

21 THE COURT: I am satisfied at the moment where
22 where it all lies, and I don't want to interrupt Mr. Kirby
23 any further, and I'm sorry I opened my big mouth.

24 MR. FAIRHURST: I am not, because if you hadn't
25 we might at that point not had any privilege.

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1 THE COURT: Let's see where we go from here, if
2 anybody knows where we are.

3 Mr. Kirby knows. I don't.

4 Q. Let me show you what has been marked for
5 identification and is in evidence as Defendant's Exhibit 27,
6 which is dated January 3, 1983. It is a letter from did
7 you go last C Douglas C. to House Glass Corp.

8 THE COURT: 27?

9 MR. KIRBY: Yes, your Honor. Defendant's 27. I
10 have reviewed it.

11 Q. Were you aware, Mr. Hadl, prior to January 3,
12 that the text of this letter was going to be sent to a
13 number of Nintendo licensees?

14 A. Yes.

15 Q. Did you review the text?

16 A. Not that I recall.

17 Q. Did anyone at Universal City Studios or MCA
18 review the text?

19 A. Not that I recall.

20 Q. Did you raise any questions about the text?

21 A. Not that I recall.

22 Q. Did you ask Mr. DiMuro to review the text?

23 A. Not that I remember.

24 Q. As of January 3, 1983, Mr. Hadl, did you know
25 that Mr. DiMuro had advised Mr. Sheinberg that RKO owns the

1 visual representation of the King Kong ape?

2 A. As of January 3, 1983?

3 Q. Yes. Did you know that?

4 A. I can't answer that yes or no. I may have.

5 Q. Do you recall a time when?

6 A. I would say I know it today.

7 Q. I am not, frankly, interested in what you know
8 today, Mr. Hadl. I am asking about January 3, 1983, and
9 whether you can tell this court that you knew that Mr.
10 Sheinberg had received a memorandum containing guidelines
11 from Mr. DiMuro in April 1982?

12 A. No, I can't tell you with certitude that I knew
13 that on that date.

14 Q. Did you know on January 3, 1983, that Mr. DiMuro
15 had advised responsible people at Universal that the
16 tourist attraction at Universal should be designed so that
17 the King Kong character was not to be modeled after the
18 ones used in either of the two motion pictures but rather
19 was to be based upon generic apes or an ape from a zoo or
20 from wild life?

21 A. The same answer.

22 Q. You don't know whether you knew or not, is that
23 what your answer is?

24 A. My answer is as I told you, that I certainly
25 understand that today. Whether I know that before January

1 3 or after January 3, I can't tell you with a certainty.

2 Q. To the best of your recollection, when you read
3 this letter did you have that in mind?

4 A. Mr. Kirby, you are asking me about a letter
5 which I take it was -- which I recollect was one of several
6 sent to other Donkey Kong licensees, other people that
7 Nintendo had given Donkey Kong licences to, and there came
8 a point in the lawsuit when I raised with Mr. Fairhurst a
9 question relating to that, and I think that it is not
10 appropriate for me to discuss that because that goes into
11 the discussions I had with my counsel as to what should be
12 done about that.

13 Q. That may indeed be a problem, Mr. Hadi, and I
14 think it is a problem we may all have to grapple with here,
15 but right now I am not asking you a question other than did
16 you have the DiMuro advice to Universal, including its
17 president Smeinerberg, in mind when you read this letter, if
18 you read it, prior to it being sent to Nintendo licensees?

19 A. I don't recall.

20 (Continued on next page)

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1 BY MR. KIRBY:

2 Q. Tell me again. Did you review the text of the
3 letter before it was sent or did you simply know that a
4 cease and did he as I say type letter was going to be sent
5 by Townley & Updike?

6 A. The best of my recollection, and I think I so
7 testified a few minutes ago that it's the latter.

8 Q. You knew a cease and desist letter would be sent
9 but you didn't review the text?

10 A. To the best of my recollection I did not review
11 the text of this letter.

12 Q. So to the best of your recollection, you didn't
13 know what Nintendo licensees were going to be advised under
14 the name of Universal City Studios; is that correct?

15 A. You are which licensees were going to be advised
16 or what they were going to be advised.

17 Q. What the Nintendo licensees were going to be
18 advised about Universal's rights in King Kong.

19 A. What Mr. Fairhurst was going to say in his
20 letter?

21 Q. Yes.

22 A. I don't know whether I can discuss that.

23 Q. Well, why don't you just answer the question
24 until someone tells you you are not to answer the question.
25

MR. FAIRHURST: Well, your Honor, I think the

1 witness is struggling here to determine where the
2 attorney-client privilege vests and, if the witness is
3 being asked a question as to what Mr. Fairhurst said to him
4 or what he said to Mr. Fairhurst in this mix, I think the
5 witness has a point. There is a privilege attached to it.
6 If the question is did you consult with counsel, yes. Did
7 the letter go out, yes, and if Mr. Kirby wants to ask me
8 what the meaning of letter is I can tell him but that's not
9 really what we are here about.

10 MR. KIRBY: Your Honor, may I be heard on this,
11 because I deliberately went from the time prior to May 21
12 to January 3 to make what I am afraid is becoming clear
13 from the testimony.

14 DiMuro says he never saw this. Hadl says now he
15 never saw this.

16 We have a claim of tortious interference here
17 with our licensees. It's based, among other things, on
18 false representations and claims made to our licensees
19 designed to bring them to their knees.

20 Now, what we are doing is being told that
21 Townley & Updike is swinging in the wind here because
22 Universal just sent them as an unguided missile out to do
23 things.

24 MR. FAIRHURST: That's a mischaracterization and
25 if Mr. Kirby wants to stick to the facts and the drop the

1 rhetoric, fine.

2 THE COURT: No. He doesn't want to drop the
3 rhetoric. He enjoys the rhetoric and so do I. Go ahead.

4 MR. KIRBY: I am trying your Honor, as you can
5 see, to ask the witness whether Universal City Studios
6 approved this letter.

7 THE COURT: Let me ask you this? Do we care if
8 they are going to be stuck with the letter if sticking is?
9 There's no question it was authorized. Let me just be
10 clear about that. You are not backing away from the letter,
11 Mr. Hadl?

12 THE WITNESS: No.

13 THE COURT: They are stuck with it. I don't
14 think there's any real dispute about that.

15 MR. FAIRHURST: Not at all.

16 THE COURT: Although it would be sort of fun to
17 make Mr. Fairhurst a defendant or maybe Miss Faucher
18 instead of Mr. Fairhurst.

19 MR. FAIRHURST: Mr. Fairhurst would delight in
20 the opportunity. But I am represent ago client regreably
21 and that's the problem with that.

22 THE COURT: We understand that. So I think
23 there's no issue as to the responsibility for the letter
24 and I think it's also appropriate to explore the state of
25 mind of Mr. Hadl, to the extent that it can be done,

1 response.

2 Q. Did you request litigation be instituted against
3 any Nintendo licensees?

4 A. Mr. Kirby, that question again is one which I
5 discussed with Mr. Fairhurst and I regard it as starting to
6 get into the area that's privileged.

7 Q. I am really not interested in you trying to
8 protect the privilege.

9 MR. FAIRHURST: He is the one who holds the
10 privilege. He happens to be an attorney, Mr. Kirby. I am
11 entrusting him with a certain degree of responsibility, if
12 I may put it that way.

13 Q. My question is: Did you instruct the
14 institution of litigation against any of the Nintendo
15 licensees after the January 3 letter, yes or no?

16 A. No.

17 Q. Did you know how many Nintendo licensees didn't
18 respond to Mr. Fairhurst's letter at all?

19 A. To the best of my recollection quite a few.

20 Q. Didn't respond at all?

21 A. Right.

22 Q. Did you reach a decision not to file suit not to
23 file suit against those who didn't bother to respond to
24 your letter?

25 A. The answer is yes, I reached a decision not to

1 bring a legal action.

2 Q. When did you reach that decision?

3 A. I can't give you a specific date. It's after
4 Mr. Fairhurst advised me of the responses.

5 Q. When was that?

6 A. I can't recall a specific date.

7 Q. A long time has gone by since January 3, 1983,
8 Mr. Hadl. Can you tell me whether you made that decision
9 before you met with Ralston Purina?

10 A. I can't remember right now when I met with
11 Ralston Purina. If you can tell me, refresh me as to when
12 I met with Ralston Purina.

13 Q. February 28, 1983.

14 A. February 28?

15 Q. Right.

16 A. Which is within a week of this memo from --

17 Q. It's within two months of the January 3 letter,
18 which was sent out right after New Year's and February 28
19 is the last day of February. By the last day of February,
20 had you reached a decision not to sue the other Nintendo
21 licensees?

22 A. To the best of my recollection, no.

23 Q. When did you reach the decision?

24 A. It would have been at some point in the time
25 frame. I don't really recollect at this moment whether I

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1 had -- Mr. Fairhurst and I had concluded at that point that
2 we had received all the responses that we were going to or
3 we hadn't.

4 Q. Now, it's true, isn't it, Mr. Hadl, that by the
5 end of the next month, March 30th, you had decided a
6 follow-up letter ought to be written to Milton Bradley?

7 A. I recollect that there was a discussion with
8 Milton Bradley. I recollect that we went over it at my
9 deposition. At the moment I'm rather unclear about it.

10 Q. Let me show you a letter dated March 30, 1983,
11 Defendant's Exhibit 54 in evidence and ask you if you saw
12 that letter at or about the time it was sent out to a
13 Nintendo licensee by your counsel.

14 A. The question is?

15 Q. Did you see that letter at or about the time it
16 was sent?

17 A. I can't tell you that I did. I don't see that I
18 am copied on it.

19 Q. Let me ask you this: Did you know whether or
20 not Milton Bradley was a major licensee of Nintendo?

21 A. To the best of my recollection, I became aware
22 at some point that Milton Bradley had put out a board game
23 called Donkey Kong. To the best of my recollection, but I
24 think it was coincidence, a representative of Milton
25 Bradley as at Universal's offices in or about the time and

1 I had a conversation with Mr. Adler and I believe he
2 advised me that the gentleman was coming in the next day as
3 a result of which the gentleman came to my office and we
4 had a discussion.

5 If I've got the right licensee. I think, to the
6 best of my recollection, that's what happened. I asked him
7 about the situation, explained our position, that we
8 believed we had the rights, that we had entered into a
9 covenant not to sue with Coleco. I don't recall at that
10 point whether we had made similar arrangement and asked him
11 to consider the matter. He said he was on his way to
12 Seattle to meet with Nintendo people and he would raise it
13 with them the next day.

14 Q. Did you describe the Coleco agreement to him?

15 A. To the best of my recollection, I did and I told
16 him what the royalty was.

17 Q. Okay. Let me ask you this, Mr. Hadl: Can you
18 account today for the fact that the only letter that
19 Universal sent out to a Nintendo licensee following up on
20 the January 3, 1983 letter was a letter to Milton Bradley?

21 A. Can I account for it.

22 Q. Can you tell me why that is?

23 A. Why to them and no one else?

24 Q. Yes.

25 A. To the best of my recollection, it involved the

1 fact that I had a meeting with this gentleman. But that
2 frankly is speculation.

3 Q. You don't know when that meeting was?

4 A. Well, you and I had a conversation about it in
5 my deposition. Remind me or refresh my recollection. At
6 the moment I can't remember.

7 Q. There's been testimony in this litigation that
8 meeting was in the fall of 1982. Does that refresh your
9 recollection?

10 A. It does but it doesn't make this letter seem
11 more timely.

12 Q. After you got this memorandum which is addressed
13 to you and Sid Sheinberg, did you discuss it with Sid
14 Sheinberg, talking about defendant's 21?

15 A. To the best of my recollection, no. I discussed
16 it with Mr. Newman.

17 Q. Let me read you this question and answer from
18 Mr. Sheinberg's deposition:

19 MR. FAIRHURST: Page?

20 MR. KIRBY: Page 283.

21 Q. "Q. Do you currently have outstanding any
22 direction within Universal with respect to actions to be
23 taken with respect to Nintendo licensees?

24 "A. I would say that the general direction
25 that my associates understand, whether it's a direction